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192

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471

DANIEL F. RICE, JOSEPH J. RICE, ET AL., ETC.,
PETITIONERS,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
A CORPORATION

No. 473

ILLINOIS COMMERCE COMMISSION, ET AL.,
PETITIONERS,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
A CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 6, 1946.

CERTIORARI GRANTED OCTOBER 21, 1946.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No.

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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ORIGINAL TRANSCRIPT OF RECORD

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

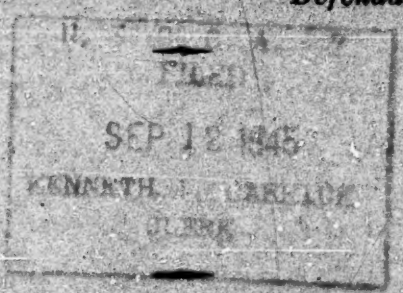
FOR THE SEVENTH CIRCUIT

No. 8897

BOARD OF TRADE OF THE CITY OF CHICAGO
A CORPORATION
Plaintiff-Appellant

vs.

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP
Defendants-Appellees



APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

ORIGINAL TRANSCRIPT OF RECORD

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 8897

BOARD OF TRADE OF THE CITY OF CHICAGO
A CORPORATION
Plaintiff-Appellant

VS.

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP
Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

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Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of June (it being the 4th day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-Five and of the Independence of the United States of America the 169th year.

PRESENT: Hon. John P. Barnes, *District Judge*
Hon. Philip L. Sullivan, *District Judge*
Hon. Michael L. Igoe, *District Judge*
Hon. William J. Campbell, *District Judge*
Hon. Walter J. LaBuy, *District Judge*
Hon. Elwyn R. Shaw, *District Judge*
Hon. William H. Holly, *District Judge*

Roy H. Johnson, *Clerk*
William H. McDonnell, *Marshal*

Tuesday, June 26, 1945
Court met pursuant to adjournment
Present: Honorable Michael L. Igoe, Trial Judge

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION, *Plaintiff,* VS. ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, and DANIEL F. RICE & COMPANY, A PARTNERSHIP, *Defendants.*	No. 44 C 1253

Be it remembered, that the above-entitled action was commenced by the filing of the following Complaint, in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 19th day of October, 1944:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,
Plaintiff,

vs.

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, and DANIEL F. RICE & COMPANY, A PARTNERSHIP,
Defendants.

Civil Action
No. 44 C 1253
Injunction
Sought

COMPLAINT

The Board of Trade of the City of Chicago, complaining of the defendants above named, alleges:

1. The plaintiff, Board of Trade of the City of Chicago, is a corporation by legislative act of the Illinois State Legislature approved February 18, 1859. Its activities affect the flow of grain in interstate commerce, and the Congress of the United States has exercised its authority to regulate its activities by legislation commonly known as the Futures Trading Act (An Act of August 24, 1921, c. 86, 42 U. S. Stat. 187), the Grain Futures Act (Act of September 21, 1922, c. 369, 42 U. S. Stat. 998), and the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a). The Secretary of Agriculture designated Board of Trade of the City of Chicago a contract market under the Grain Futures Act on May 3, 1923, and again under the Commodity Exchange Act on September 14, 1936. It was also designated as a contract market for soy beans, lard and cottonseed oil by said Secretary on November 26, 1940, effective December 8, 1940. Said Board of Trade of the City of Chicago cannot carry on its functions as a board of trade and commodity exchange without such designation as a contract market under the provisions of said Commodity Exchange Act.

2. The defendants, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, are Commissioners, constituting the Illinois Commerce Commission. Said Commission is an administrative body created by an act of the Illinois Legislature approved June 29, 1921, entitled "An Act concerning public utilities." Daniel F. Rice & Company is a partnership consisting of Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, partners, grain dealers. Each of said defendants has an office in the City of Chicago, in the Northern District of Illinois, Eastern Division.

3. This Court has jurisdiction of this cause in that the right to relief depends on the construction or application of the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a), this defendant contending that the United States, by the above congressional enactment, has pre-empted the field in regulating contract markets, and the Board of Trade of the City of Chicago as such, to the exclusion of the State of Illinois, its officers and agencies, including the Illinois Commerce Commission; also on the grounds that this suit arises under a law regulating interstate commerce. The action of the Commission in taking jurisdiction of this cause does interfere with interstate commerce and a plain, speedy and efficient remedy cannot be had at law or in equity in the Courts of the State of Illinois. The expense of defending said cause before the Commission by this defendant will amount to more than Three Thousand Dollars ($3,000).

4. On or about July 28, 1944, there was filed with the Illinois Commerce Commission a complaint entitled—Daniel F. Rice and Company, etc., Plaintiff vs. Board of Trade of the City of Chicago, The Chicago Grain Corporation, et al., Defendants, Number 32267, which was served on this plaintiff July 29, 1944, and a copy of which is designated as Exhibit A and filed herewith, and by this reference made a part of this complaint. Paragraph 15 and 16 of said complaint are in words and figures, as follows:

> "15. The Chicago Board of Trade has formulated and adopted rules and regulations governing its maintenance as a commercial grain exchange. These rules and regulations should be such as to promote the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market.

In fact, however, the rules and regulations adopted by the Chicago Board of Trade are uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory.

"16. The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain Warehouse Act."

And the relief sought through the Commission as to this plaintiff is that it "declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific." And that said Commission enter such order or orders from time to time during the hearings as the necessities and justice of the situation require, in order to afford maximum relief as promptly as possible. Section 194b of the Illinois Grain Warehouse Act (mentioned in paragraph 16 of said complaint) is in words and figures, as follows:

"194b. Rules of board of trade or grain exchange to be approved.]—§6b. No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective. [Added by act approved July 14, 1927. L. 1927, p. 711]."

5. Board of Trade of the City of Chicago filed its motion that it be dismissed from said proceedings before the Illinois Commerce Commission on jurisdictional grounds, a copy of which said motion is attached hereto as Exhibit B, and made a part hereof by reference. A brief in support of said motion was filed with said Commission, and plaintiff's attorney argued orally in support of said motion.

6. On October 11, 1944, the said Illinois Commerce Commission in said cause notified Board of Trade of the City of Chicago, as follows:

> "You are hereby notified that the Commission, in conference on October 10, 1944, *denied* the following motions in the above-styled proceedings:
>
> * * * * *
>
> "(4) Motion by respondent, Board of Trade of the City of Chicago, that it be dismissed from this proceeding on the ground that the Commission is without jurisdiction of the subject matter of this complaint filed in this case on July 28, 1944, in so far as the same is directed against said respondent, Board of Trade of the City of Chicago.
>
> "You are hereby further notified that the Commission has set the above case for hearing at the office of the Commission at Chicago, Illinois, 19th Floor, 160 North LaSalle Street, on Tuesday, October 24, 1944, at the hour of 10:00 A. M."

7. The Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a) and the regulations of the Secretary of Agriculture issued thereunder supersede and nullify the constitution of the State of Illinois and all laws, statutes and ordinances of the State of Illinois, and all orders and regulations of the Illinois Commerce Commission with respect to the operation of the Board of Trade of the City of Chicago as a contract market; the constitution of the State of Illinois and all laws, statutes and ordinances of the State of Illinois, including Section 194b of the Illinois Grain Warehouse Act above referred to (including the order referred to in paragraph 6 herein), and all orders and regulations of the Illinois Commerce Commission, inconsistent with said Commodity Exchange Act and the regulations of the Secretary of Agriculture, are null and void; and the Congress of the United States has fully and completely occupied and pre-empted the field

of regulation of boards of trade, and the plaintiff, as a contract market under said Act of Congress is not subject to the jurisdiction of the Illinois Commerce Commission.

8. Under Section 5b of the Commodity Exchange Act (7 USC 7b) the designation of the Board of Trade as a contract market is subject to suspension or revocation should it fail to comply with the provisions of the Commodity Exchange Act and the rules and regulations issued thereunder by the Secretary of Agriculture. Under Section 5a of said Act, all copies of the by-laws, rules and regulations made or issued by the governing body or any committee of a contract market must be promptly furnished to the Secretary of Agriculture [7 USC, 7a (1)]. Under Section 5a (7) receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) must be accepted in satisfaction of any futures contracts, etc. [7 USC 7a (7)]. The charter, rules and regulations of the Board of Trade of the City of Chicago are attached hereto as Exhibit C; the regulations of the Secretary of Agriculture under the Commodity Exchange Act are attached hereto as Exhibit D; and the regulations of the Secretary of Agriculture under the Federal Warehouse Act are attached hereto as Exhibit E. Said Exhibits C, D and E are by this reference made a part of this complaint.

9. While the Congress of the United States has fully and completely occupied and pre-empted the field of regulation of contract markets, the Illinois Commerce Commission, by refusing to dismiss the Board of Trade of the City of Chicago from the aforesaid cause, has assumed to exercise control over the same field, and, in retaining jurisdiction, to require the Board of Trade to adopt and submit to it for approval rules and regulations. Unless said defendants are restrained from the continuation of the prosecution of said cause before the Illinois Commerce Commission, and if plaintiff is required to comply with the orders of the Illinois Commerce Commission, plaintiff will be subject to suspension and revocation of its designation as a contract market, without which it cannot operate as a contract market. There is no law other than the Commodity Exchange Act or administrative officer other than the Secretary of Agriculture by and through which the Board of Trade of the City of Chicago may be authorized to function as a board of trade and contract market. The suspension

and revocation of its designation as a contract market would necessitate the closing of the exchange, causing irreparable injury and damage to plaintiff. The said exchange is now complying with the mandates of the Commodity Exchange Act. A failure to comply with the orders of the Illinois Commerce Commission, contrary to the provisions of the Commodity Exchange Act and the regulations of the Secretary of Agriculture promulgated thereunder, would cause plaintiff to suffer penalties under the laws of the State of Illinois. Unless the said defendants are restrained from the continuation of the prosecution of said cause commencing October 24, 1944 before the Illinois Commerce Commission, plaintiff will be put to the necessity of great expense in defending same that would work injury to plaintiff not assessable in money damages and cause irreparable loss and injury to plaintiff. Plaintiff has no adequate remedy at law against interference by the Illinois Commerce Commission and the loss of its right to operate as a contract market; and if the relief prayed herein be not granted, plaintiff will suffer irreparable loss and injury.

WHEREFORE, plaintiff prays that

(a) Process may issue against the Illinois Commerce Commission and each of the Commissioners, John D. Biggs, William Parrillo, Frank Peska; Edwin A. Rosenstone and Val. J. Washington, and that service of such process and of this complaint be made by filing a copy thereof in the office of the Illinois Commerce Commission on the Secretary thereof on the 19th Floor, 160 North La Salle Street, Chicago, Illinois, and that an additional copy be served upon the defendant Daniel F. Rice & Company.

(b) Pending a final hearing herein, this Court issue a temporary injunction restraining and enjoining the defendants, and each of them, from further assuming and taking jurisdiction, prosecuting or maintaining said case, cause or litigation, entitled—Daniel F. Rice and Company vs. Chicago Grain Corporation, et al. and Board of Trade of the City of Chicago, designated as Number 32267, before the Illinois Commerce Commission, as to Board of Trade of the City of Chicago, or from enforcing or attempting to enforce against said Board of Trade of the City of Chicago, by order, rule, regulation, or otherwise, any provisions of the statutes of the State of Illinois, and especially the provision of Section 194b of the Illinois Grain Warehouse

Act, or of promulgating any rule, order or regulation that would curtail or infringe on the rights of plaintiff as a contract market under the Commodity Exchange Act, and that said Commission be restrained and enjoined from proceeding with the hearings therein as to this defendant on October 24, 1944, or at any other time prior to the final order and determination of this cause.

(c) Upon final hearing plaintiff have judgment perpetually enjoining the defendants, and each of them, from further prosecuting as to this plaintiff the above referred to cause before and by the Illinois Commerce Commission, and from enforcing or attempting to enforce by order, rule, regulation, or otherwise, any provisions of the statutes of the State of Illinois, and especially the provision of Section 194b of the Illinois Grain Warehouse Act, and that said Commission be perpetually enjoined from promulgating any rule, order or regulation that would curtail or infringe on the right of plaintiff as a contract market under the Commodity Exchange Act, and from assuming jurisdiction or threatening to assume jurisdiction of plaintiff, Board of Trade of the City of Chicago, for the purpose of regulation or otherwise.

(d) Plaintiff have such other and further relief as may be warranted in the premises.

Board of Trade of the City of Chicago,
By Weymouth Kirkland,
Howard Ellis,
William H. Symmes,
Its Attorneys,
33 North La Salle Street,
Chicago, Illinois.

State of Illinois }
County of Cook } ss.

Fred H. Clutton, being first duly sworn, on oath deposes and says that he is Secretary of the Board of Trade of the City of Chicago, a corporation, plaintiff herein: that he is duly authorized in behalf of the Board of Trade of the City of Chicago to make this affidavit; that he has read the foregoing complaint of Board of Trade of the City of Chicago and knows the contents thereof; that the statements of fact therein contained are true; that matters of legal import contained therein he is advised and believes are true.

Fred H. Clutton.

Subscribed and sworn to before me this 18th day of October, A. D. 1944.

John A. Aitkins,

EXHIBIT A

Received Jul 28 1944
Illinois Commerce Commission
Chicago Office

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Daniel F. Rice and Company, a partnership, grain dealer, on behalf of his customers and public grain producers, dealers and processors, similarly situated,

Plaintiff,

vs.

The Chicago Grain Corp., Norris Grain Elevator Co., General Mills, Inc.—Star Grain Division, Rosenbaum Bros., Santa Fe Elevator Corp., Norris Grain Co., Cargill, Inc., Continental Grain Co., Great Lakes Elevator Corp., Cargill Illinois Grain Co., Stratton Grain Co. and Board of Trade of the City of Chicago,

Defendants.

No. 32267

In the matter of unjust, unreasonable and discriminatory rates and charges, the maintenance of discriminatory practices, and the violation of law by public grain warehouses.

COMPLAINT

Daniel F. Rice and Company, plaintiff, appearing on behalf of its customers and grain producers, dealers and processors similarly situated, by Irvin Rooks and Leo A. Freeman, its attorneys, complains of the defendants as follows:

1. Daniel F. Rice and Company, an Illinois partnership, is an owner, shipper and dealer in grain in the state of Illinois, is a member of the Chicago Board of Trade and other grain exchanges, and is and for some years past has

been a consumer of the defendant warehousemen named herein.

2. Daniel F. Rice and Company purchases, sells and deals in grain on the Chicago Board of Trade for and on behalf of grain producers, grain dealers and grain processors, who thereby are and have been consumers of the defendant warehousemen named herein. This complaint is brought not only on behalf of Daniel F. Rice and Company and his customers, but as representative of, and for the use and benefit of all public grain producers, dealers and processors, who have stored grain in the public grain elevators maintained by defendant warehousemen, or who have paid grain storage and warehousing charges, and who therefore have rights in common with the plaintiff herein.

3. Defendants, Chicago Grain Corp., Norris Grain Elevator Co., Rosenbaum Bros., Santa Fe Elevator Corp., Norris Grain Co., Great Lakes Elevator Corp., Cargill Illinois Grain Co., all Illinois corporations, and Cargill, Inc., General Mills, Inc.—Star Grain Division, Continental Grain Co., Stratton Grain Co., all foreign corporations, (hereinafter referred to as "warehousemen") own or control, and operate property and facilities within the state of Illinois, which are used in the public storage and warehousing of grain for hire and compensation, and as such are all public utilities as defined in Section 10 of an act of the state of Illinois entitled "An Act concerning public utilities", approved July 29, 1921, as amended (hereinafter "Public Utility Act") which reads in part:

> "The term 'public utility', when used in this act means and includes every corporation *** their lessees, trustees or receivers *** that now or hereafter:
>
> "(a) May own, control, operate or manage, within the State directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with *** the storage or warehousing of grain; *** or that
>
> "(b) May own or control any franchise, license, permit or right to engage in any such business.
>
> * * * * *
>
> "The term 'warehouse' when used in this act, includes all elevators or storehouses where grain is

stored for a compensation, whether the property stored be kept separate or not."

4. The defendant Board of Trade of the City of Chicago (hereinafter "Chicago Board of Trade") is a board of trade and grain exchange, organized under a Special Act of the Illinois Legislature, approved February 18, 1859.

5. The defendant warehousemen own or control, and operate grain elevator capacity for public storage and warehousing of grain. In addition, they own and deal in grain, and usually store such grain in portions of their own elevators designated as private storage capacity. They have been issued and possess either state or federal grain warehouse licenses. The warehousemen involved, the grain elevators owned or controlled, and operated, and the type of license possessed are as follows:

WAREHOUSEMAN	GRAIN ELEVATOR	LICENSE POSSESSED
Chicago Grain Corp.	Irondale A	State
Norris Grain Elev. Co.	Norris	State
Norris Grain Co.	Wabash	Federal
Norris Grain Co.	Elevator J*	Federal
General Mills, Inc. Star Grain Div.	Rialto	Federal
Rosenbaum Bros.	Calumet	Federal
Rosenbaum Bros.	N. Y. Central*	Federal
Santa Fe Elev. Corp.	Santa Fe	Federal
Cargill Ill. Grain Co. Cargill, Inc.	Chicago & N. W. Terminal & Annex	Federal
Continental Grain Co.	Rock-Island Terminal C	Federal
Continental Grain Co.	Rock-Island Terminal D	Federal
Great Lakes Elev. Corp.	National	Federal
Stratton Grain Co.	Dickinson	Federal

*Not regular for delivery on Board of Trade Contracts.

The total available grain elevator and warehouse capacity in the Chicago terminal market is approximately 40,000,000 bushels out of which approximately 27,000,000 bushels of

capacity has been designated for public storage. The remaining capacity is designated as private storage capacity although such private capacity may be used from time to time for public storage of grain.

6. The grain storage rates established by each and all of said warehousemen are:

For public storage of grain:

On all grain, soybeans and flax seed received in bulk and inspected in good condition.

Unloading and loading out charges.

1¼¢ per bushel for receiving and shipping and for first ten days' storage or part thereof.

Storage charges.

1/25 of 1¢ per bushel per day for each additional day storage (after first ten) so long as said grain, soybeans and flax seed remain in good condition.

Conditioning, Insurance and other services.

No rates established.

For storage of grain owned by or under control of the United States of America or an agency thereof:

Unloading and loading out charges.

For barley, wheat, rye and corn received by rail or water, ½¢ per bushel for unloading, ½¢ per bushel for loading out.

Storage charges.

For barley, wheat and rye received by rail or water, 1/30 of 1¢ per bushel per day for the first 210 days of the annual period for computing charges, and no charge for the remainder of the period.

For corn received by rail or water, 1/30 of 1¢ per bushel per day for the first 210 days of the annual period for computing charges and no charge for the remainder of the period.

Conditioning, insurance and all other charges.

For barley, wheat and rye, ⅜ of 1¢ per bushel per month or fraction thereof, for the first six storage months of the annual period used for computing charges.

For corn, ⅜ of 1¢ per bushel per month, or fraction thereof, for first three storage months of the period used for computing charges.

7. Each and all of said warehousemen have unlawfully maintained and do now maintain unjust, unreasonable and excessive rates and charges for services rendered, contrary to Section 32 of the Public Utility Act, in that the grain storage rates charged public grain producers, owners, shippers, dealers, receivers and processors, and charged your plaintiff are grossly excessive and exorbitant. Such rates have resulted in excess earnings, profits and return to the defendant warehousemen and have far exceeded the reasonable value and worth of the services rendered.

8. Each and all of said warehousemen have been and are guilty of discrimination against public grain producers, owners, shippers, dealers, receivers and processors, and against your plaintiff, and have been and are granting unwarranted preferences and advantages to the federal government and agencies thereof, as an owner, dealer and storer of grain, contrary to Section 38 of the Public Utility Act and Section 15 of "An Act to regulate public warehouses, etc.", approved April 25, 1871, as amended (hereinafter "Illinois Grain Warehouse Act") by storing and warehousing grain for public grain producers, owners, shippers, dealers, receivers and processors, and charged your plaintiff, at a grossly unwarranted and unreasonable difference in grain storage rates than are charged the federal government and agencies thereof.

9. All or some of said warehousemen, by reason of their dual and conflicting positions as public grain warehousemen and dealers in grain, have received undue preferences and advantages as such dealers, to the detriment and in discrimination against public grain producers, owners, shippers, dealers, receivers and processors, and your plaintiff, as customers of such warehousemen, all in violation of Sections 32, 38 and 41 of the Public Utility Act, and of Sections 6, 11, 15 and 17 of the Illinois Grain Warehouse Act, by:

(a) Mixing high quality public grain with inferior grain owned or acquired by the defendant warehouseman to reduce grain delivered to the point of minimum quality within the established grain trade.

(b) Sacrificing part of storage charges to effect purchases and sales of grain and otherwise manipulating

and rebating storage charges on grain stored in private warehouse space.

(c) Furnishing transit tonnage to owners of public grain of the most undesirable type, while withholding for their own use the most desirable transit tonnage, thereby placing the owners of public grain at a distinct disadvantage in merchandising grain in storage.

(d) Providing for storage of public grain in old wooden warehouses carrying exorbitant insurance premium rates, while storing the warehousemen's own grain in modern warehouses with reasonable insurance premium rates.

(e) Unduly and imprudently delaying loading of grain after return of warehouse receipt issued by the particular warehouseman, the tender of proper charges and the receipt of instructions to load grain for delivery.

10. The existing practice of all or some of said warehousemen in occupying a dual and conflicting position as public grain warehouseman and at the same time dealing in grain, and of storing or mixing in his public warehouse grain in which he has an interest, direct or indirect, is unlawful and contrary to the public policy of the state as expressed in Article XIII of the Illinois Constitution of 1870. Such public warehousemen are prohibited under the constitution from holding an interest inconsistent with and adverse to those whom they are required to serve. Such practices have been enjoined and declared illegal by the Supreme Court of Illinois in Central Elevator Co. v. People, 174 Ill. 203 (1898); Hannah v. People, 198 Ill. 77 (1902); and the vice thereof recognized by this commission in re Board of Trade Whse. Corp., Ill. C. C. Docket No. 17662, P.U.R. 1928E, 65.

11. The following grain elevators and warehouses owned or controlled, and operated by the warehousemen indicated are unreasonable, unsafe, improper, inadequate and inefficient in that said elevators consist of old wooden structures which may be readily destroyed by fire, and as a consequence require exorbitant and prohibitive insurance premium rates:

ELEVATOR	OWNER
Wabash	Norris Grain Company
Rock Island Terminal	
C & D	Continental Grain Company
National	Great Lakes Elevator Corp.

12. All or some of the warehousemen, contrary to their duty as public warehousemen to render adequate, proper and efficient warehousing service, have failed to adequately, properly and efficiently store and handle public grain, and as a consequence the character and quality of the grain so inadequately, improperly and inefficiently stored and handled, has deteriorated to the damage of public grain producers, owners, shippers, dealers, receivers, processors, and your plaintiff.

13. All or some of the warehousemen have violated the laws of the State of Illinois by:

(a) Failing to secure prior approval of the Illinois Commerce Commission before entering into management, construction, engineering, supply, financial and similar contracts and arrangements between such warehousemen as public utilities and an affiliate, as required by Section 8(a) of the Public Utility Act.

(b) Failing to secure prior approval of contracts, leases, etc., between such warehousemen and other public utilities, as required by Section 27 of the Public Utility Act.

(c) Failing to secure authorization of the commission before issuing securities payable at periods of more than twelve months after date, as required by Section 21 of the Public Utility Act.

(d) Failing to file, print and publish all schedules of rates and charges, as required by Section 33 of the Public Utility Act.

(e) Rendering storage and warehousing services without having filed and published the rates, charges, rules and regulations, governing such services, in violation of the prohibitions contained in Section 35 of the Public Utility Act.

(f) Abandoning and discontinuing public grain ware-

housing service and capacity without first securing the approval of the commission, in violation of Section 49(a) of the Public Utility Act.

(g) Charging unjust, unreasonable and discriminatory rates and pursuing discriminatory practices, in violation of Section 32, 38 and 41 of the Public Utility Act and Section 15 of the Illinois Grain Warehouse Act.

(h) Operating without a state license, in violation of Section 3 of the Illinois Grain Warehouse Act.

(i) Mixing public grain with grains of different grades, in violation of Sections 6 and 17 of the Illinois Grain Warehouse Act.

14. In consequence of the unreasonable and excessive rates and charges maintained by said warehousemen, the discriminatory rates maintained and discriminatory practices perpetrated, the inadequate, improper, unsafe and inefficient service rendered, and the violations of the state constitution and state statutes:

The required equality between public warehouse operators and public dealers, receivers and processors of grain is destroyed;

free competition in the purchase and sale of grain is seriously diminished;

arbitrary and unnatural grain prices and fluctuations in the price of grain have resulted;

dealings in futures on the Chicago Board of Trade are uncertain and unattractive;

the free distribution and marketing of grain is impeded, with particularly serious effect upon the grain export market and trade; and

the status and importance of the Chicago Board of Trade has declined.

15. The Chicago Board of Trade has formulated and adopted Rules and Regulations governing its maintenance as a commercial grain exchange. These rules and regulations should be such as to promote the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market. In fact, however, the Rules and Regulations adopted by the Chicago Board of Trade

are uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory.

16. The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain Warehouse Act.

WHEREFOR, Complainant Daniel F. Rice and Company, for and on behalf of his customers and public grain producers, dealers and processors similarly situated, prays that this Honorable Commission:

(a) Serve copies of this complaint upon all of the defendants named herein.

(b) Require said defendants to answer this complaint or otherwise plead thereto, within ten days after service thereof.

(c) Set the cause for immediate hearings.

(d) Institute an inquiry and investigation of the unjust, unreasonable and discriminatory rates and practices, the inadequate, improper and unsafe services rendered, and the innumerable violations of law, as specified above.

(e) Order the defendants herein to make available to the Commission and the plaintiff, all of the books, records and files relating to grain storage rates, charges and practices specified above.

(f) After hearings, fix just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain.

(g) After hearings, issue an order prohibiting the discriminatory practices enumerated above, and establishing just, reasonable safe, proper, adequate and efficient grain storage and warehousing service.

(h) After hearings, assess penalties for such viola-

tions of the Illinois state constitution and Illinois statutes as have occurred, including the cancellation of grain warehouse licenses.

(i) Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific.

(j) Enter such order or orders from time to time during the hearings as the necessities and justice of the situation require, in order to afford maximum relief as promptly as possible.

Daniel F. Rice & Company

By_____

Joseph J. Rice

Irvin Rooks,
Leo A. Freeman,
Attorneys for Plaintiff.
3710—135 S. LaSalle St.
Chicago 3, Illinois.

State of Illinois }
County of Cook } ss.

Joseph J. Rice, being first duly sworn, on oath deposes and says that he is a partner of Daniel F. Rice and Company, plaintiff in the above entitled cause; that he has read the foregoing complaint by him subscribed on behalf of said plaintiff; that he knows the content thereof and that the allegations therein contained are true of his own knowledge, information and belief.

_____

Subscribed and sworn to before me
this 28th day of July, A. D. 1944.

_____

Notary Public.

EXHIBIT B

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Daniel F. Rice and Company, etc.,
Plaintiff,

vs.

The Chicago Grain Corp., et al. and Board of Trade of the City of Chicago,
Defendants.

No. 32267

MOTION OF DEFENDANT BOARD OF TRADE OF THE CITY OF CHICAGO THAT IT BE DISMISSED FROM THIS PROCEEDING ON JURISDICTIONAL GROUNDS

Now comes the defendant, BOARD OF TRADE OF THE CITY OF CHICAGO, by Kirkland, Fleming, Green, Martin & Ellis, its attorneys, and moves that it be dismissed from this proceeding for the following reasons:

1. This defendant is a grain exchange organized under a special act of the legislature of the State of Illinois, approved February 18, 1859. Its activities affect the flow of grain in interstate commerce to the extent that this defendant is subject to national regulation. (*Board of Trade of the City of Chicago* v. *Olsen*, 262 U. S. 1). Attached hereto as Exhibit 1 is a pamphlet setting forth (1) the charter, (2) the rules, and (3) the regulations of the Board of Trade of the City of Chicago.

2. The national government has exercised its authority to regulate the activities of this defendant by legislation commonly know as the Futures Trading Act (An Act of August 24, 1921, c. 86, 42 U. S. Stat. 187), the Grain Futures Act (Act of September 21, 1922, c. 369, 42 U. S. Stat. 998), and the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a). Attached hereto as Exhibit 2 is a pamphlet containing (1) the Commodity Exchange Act as amended to date, and (2) the rules and regulations of the Secretary of Agriculture

issued thereunder. This defendant was declared a contract market on May 3. 1923 under the Grain Futures Act and was designated as a contract market under the Commodity Exchange Act on September 14, 1936. This defendant was designated a contract market for soy beans, lard and cottonseed oil on November 26, 1940, effective December 8, 1940. The designation of this defendant as a contract market is subject to revocation should it fail to comply with the Commodity Exchange Act above described and the rules and regulations issued by the Secretary of Agriculture thereunder.

3. While this defendant has always complied with Section 194b of the Illinois Grain Warehouse Act (An Act to regulate public warehouses, etc., approved April 25, 1871 as amended, Chap. 141, Sections 189-221, Illinois Revised Statutes) and has always complied in all respects with the laws of the State of Illinois and the orders of this Commission, nevertheless this action requires this defendant to assert, as it here asserts, that said Commodity Exchange Act and the regulations of the Secretary issued thereunder supersede and nullify the constitution of the State of Illinois and all laws, statutes and ordinances of the State of Illinois and all orders and regulations of this Commission with respect to the operations of this defendant as a contract market, and the constitution of the State of Illinois and all laws, statutes and ordinances of the State of Illinois and all orders and regulations of this Commission inconsistent with said Commodity Exchange Act and the regulations of the Secretary of Agriculture issued thereunder, and particularly supersedes and nullifies said Section 194b of the Illinois Grain Warehouse Act above described.

4. Section 5a. (7) of said Commodity Exchange Act requires every contract market, including this defendant, to

> "require that receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or

enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

We attach hereto as Exhibit 3 said United States Warehouse Act (39 U. S. Stat. 486 as amended July 25, 1919, February 23, 1923 and March 2, 1931, 7 U. S. C. 241-273), and the regulations of the Secretary of Agriculture issued thereunder.

5. In so far as said complaint refers to this defendant in connection with the warehouses described in said complaint as operating under federal license issued by the Secretary of Agriculture in pursuance of the United States Warehouse Act above described, to-wit, Norris Grain Co., Wabash; General Mills, Inc., Star Grain Division, Rialto; Rosenbaum Brothers, Calumet; Santa Fe Elevator Corporation, Santa Fe; Cargill, Inc., Chicago & Northwestern, Terminal & Annex; Continental Grain Company, Rock Island Terminal C; Continental Grain Company, Rock Island Terminal D; and Great Lake Elevator Corporation, National, this defendant asserts that its rules and regulations with respect to the warehousing of grain in such houses is not subject to the jurisdiction of this Commission with respect to its rules and regulations relating to the warehousing of grain, and in this connection calls to the attention of the Commission Section 29 of said Federal Warehouse Act (7 U. S. C. §269), as follows:

"*Cooperation with State authorities; authority of Secretary; operation of existing laws.*

In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with

respect to all persons securing a license hereunder so long as said license remains in effect. This chapter shall not be construed so as to limit the operation of any statute of the United States relating to warehouses or to warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States. Aug. 11, 1916, c. 313, Part C, § 29, 39 Stat. 490; Feb. 23, 1923, c. 106, 42 Stat. 1285; March 2, 1931, c. 366, § 9, 46 Stat. 1465."

In so far as said complaint refers to this defendant in connection with the following warehouses described in said complaint as Norris Grain Co. Elevator "J", Rosenbaum Brothers New York Central, and Stratton Grain Company Dickinson, as operating under federal licenses issued by the Secretary of Agriculture in pursuance of United States Warehouse Act above described, the grain in said elevators is not deliverable on grain futures contracts and the Board of Trade of the City of Chicago has made no rule or regulation concerning or affecting said grain elevators or warehouse receipts issued by them, and such elevators are of no concern and are not in any way connected with trading on the Board of Trade of the City of Chicago. There is no such corporation now in existence as Cargill Illinois Grain Company.

6. This defendant avers that on October 1, 1937, the then Attorney General of the State of Illinois considered Section 29 of said Act (7 U.S.C. § 269) and rendered his opinion that "* * *, said Act constitutes a proper exercise of Federal jurisdiction and it is my opinion that the provisions thereof supersede all provisions of the State law inconsistent therewith."

7. This defendant avers that should it voluntarily submit to the jurisdiction of the State of Illinois and to the jurisdiction of this Commission, as prayed in said complaint, or should this defendant involuntarily be subjected to the jurisdiction of the State of Illinois and to this Commission, as prayed in said complaint, this defendant would be placed in jeopardy of revocation and suspension of its designation

as a contract market under said Commodity Exchange Act and to the penalties of such suspension or revocation.

For the foregoing reasons this defendant moves that it be dismissed from said proceeding.

Board of Trade of the City of Chicago,
By Kirkland, Fleming, Green, Martin & Ellis,
Its Attorneys.

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

FRED H. CLUTTON, being first duly sworn, on oath deposes and says that he is Secretary of the Board of Trade of the City of Chicago, a corporation, defendant herein; that he is duly authorized in behalf of the Board of Trade of the City of Chicago to make this affidavit; that he has read the foregoing Motion of the Board of Trade of the City of Chicago and knows the contents thereof; that the statements of fact therein contained are true; that matters of legal import contained therein he is advised and believes are true.

Fred H. Clutton.

Subscribed and sworn to before me,
a Notary Public, this 31st day of
August, A. D. 1944.

(SEAL)

John A. Aitkins,
Notary Public.

RULES AND REGULATIONS

OF THE

BOARD OF TRADE

OF THE

CITY OF CHICAGO



APRIL 1, 1944

RULES AND REGULATIONS

OF THE

BOARD OF TRADE

OF THE

CITY OF CHICAGO

APRIL 1, 1944

LEGISLATIVE ACT TO INCORPORATE

—THE—

BOARD OF TRADE, CHICAGO

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Corporate title.

SECTION 1. That the persons now composing the Board of Trade of the City of Chicago are hereby created a body politic and corporate, under the name and style of the "BOARD OF TRADE OF THE CITY OF CHICAGO," and by that name may sue and be sued, implead and be impleaded, receive and hold property and effects, real and personal, by gift, devise, or purchase, and dispose of the same by sale, lease, or otherwise (said property so held not to exceed at any time the sum of two hundred thousand dollars); may have a common seal, and alter the same from time to time; and make such Rules, Regulations, and By-Laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land.

Limit of property.

Seal.

Power to adopt Rules, Regulations, and By-Laws.

Present Rules, Regulations, and By-Laws, to govern until duly changed.

SEC. 2. That the Rules, Regulations, and By-Laws of the said existing Board of Trade shall be the Rules and By-Laws of the corporation hereby created, until the same shall be regularly repealed or altered; and that the present officers of said Association, known as the "Board of Trade of the City of Chicago," shall be the officers of the corporation hereby created, until their respective offices shall regularly expire or be vacated, or until the election of new officers according to the provisions hereof.

Officers.

SEC. 3. The officers shall consist of a President, one or more Vice-Presidents, and such other officers as may be determined upon by the Rules, Regulations, or By-Laws of said corporation. All of said officers shall respectively hold their offices for the length of time fixed upon by the Rules and Regulations of said corporation hereby created, and until their successors are elected and qualified.

Rules, Regulations, and By-Laws.

SEC. 4. The said corporation is hereby authorized to establish such Rules, Regulations, and By-Laws for the management of their business, and the mode in which it shall be transacted, as they may think proper.

Manner of holding elections.

SEC. 5. The time and manner of holding elections and making appointments of such officers as are not elected shall be established by the Rules, Regulations, and By-Laws of said corporation.

Power to admit and expel.

SEC. 6. Said corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the Rules, Regulations, and By-Laws thereof.

Committees of Arbitration and Appeals.

SEC. 7. Said corporation may constitute and appoint Committees of Reference and Arbitration, and Committees of Appeals, who shall be governed by such rules and regulations as may be prescribed in the Rules, Regulations, or By-Laws for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the Association, or by other persons not members thereof; the acting chairman of either of said committees, when sitting as arbitrators, may administer oaths to the parties and witnesses, and issue subpoenas and attachments, compelling the attendance of witnesses, the same as justices of the peace, and in like manner directed to any constable to execute.

Executions upon awards.

SEC. 8. When any submission shall have been made in writing and a final award shall have been rendered, and no appeal taken within the time fixed by the Rules or By-Laws, then, on filing such award and submission with the Clerk of the Circuit Court, an execution may issue upon such award as if it were a judgment rendered in the Circuit Court, and such award shall thenceforth have the force and effect of such a judgment, and shall be entered upon the judgment docket of said court.

Bonds.

Oaths of office.

Suits upon bonds.

SEC. 9. It shall be lawful for said corporation, when they shall think proper, to receive and require of and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts; and the President or Secretary is hereby authorized to administer such oaths of office as may be prescribed in the By-Laws or Rules of said corporation. Said bonds shall be made payable and conditioned as prescribed by the Rules or By-Laws of said corporation, and may be sued and the moneys collected and held for the use of the party injured, or such other use as may be determined upon by said corporation.

Inspectors, gaugers, and weighers.

Certificates, evidence of quantity, grade, or quality.

Employment of appointee not obligatory.

SEC. 10. Said corporation shall have power to appoint one or more persons, as they may see fit, to examine, measure, weigh, gauge, or inspect flour, grain, provisions, liquor, lumber, or any other articles of produce or traffic commonly dealt in by the members of said corporation; and the certificate of such person or inspector as to the quality or quantity of any such article, or their brand or mark upon it, or upon any package containing such article, shall be evidence between buyer and seller of the quantity, grade, or quality of the same, and shall be binding upon the members of said corporation, or others interested, and requiring or assenting to the employment of such weighers, measurers, gaugers, or inspectors; nothing herein contained, however, shall compel the employment, by any one, of any such appointee.

Fines.

Shall not exceed five dollars.

SEC. 11. Said corporation may inflict fines upon any of its members and collect the same, for breach of its Rules, Regulations, or By-Laws; but no fine shall exceed five dollars. Such fines may be collected by action of debt, before a justice of the peace, in the name of the corporation.

Limitation of powers.

SEC. 12. Said corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management of boards of

trade or chambers of commerce, or as provided in the foregoing sections of this bill.

WM. R. MORRISON,
Speaker of the House of Representatives.

JOHN WOOD,
Speaker of the Senate.

Approved February 18, 1859:

WM. H. BISSELL.

UNITED STATES OF AMERICA, STATE OF ILLINOIS } ss.

Certificate. I, O. M. HATCH, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

In witness whereof, I have he unto set my hand and affixed the great Seal of the State, at the City of Springfield, this seventh day of March, A. D. 1859.

O. M. HATCH,
Secretary of State

[SEAL]

RULES AND REGULATIONS

—OF THE—

Board of Trade of the City of Chicago

IN FORCE APRIL 1, 1944

OBJECTS

Preamble. The objects of the Association are: To maintain a Commercial Exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and to disseminate valuable commercial and economic information; *and, generally*, to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits.

In accordance with franchises conferred by its Charter, and to accomplish the objects sought by the Association in its organization,

THE BOARD OF TRADE OF THE CITY OF CHICAGO has adopted, for its direction and government, the following Rules and Regulations.

RULES

CHAPTER I.

Definitions.

1. Whenever used in these Rules and Regulations, unless the context otherwise requires, the following words and expressions shall be defined as follows:

2. And.—May be construed as "or," and vice versa when the sense requires.

3. Association.—The Board of Trade of the City of Chicago.

4. Board.—The Board of Directors of the Association.

5. Bulletin Board.—The bulletin board in the Exchange Hall where notices are customarily posted.

6. Business Day.—Days when the Association is open for business.

7. Cash Grain.—Spot grain and grain to arrive.

*8. Cash Grain Broker.—A member who negotiates purchases or sales of cash grain for a brokerage.

9. Chicago District.—The Chicago District as now or hereafter defined in the joint railroad tariffs of the railroads entering Chicago.

10. Check Slips.—Confirmation of trades between members, as defined in the By-Laws or Resolutions of the Clearing House.

11. Clearing House.—The Board of Trade Clearing Corporation, or such other corporation or agency as may be authorized to clear trades for members.

12. Clearing Member.—A member of the Association who is also a member of the Clearing House.

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*See "Rulings."

13. COMMISSION MERCHANT.—A member who makes a trade, either for another member or for a non-member, but who makes the trade in his own name and becomes liable as principal as between himself and the other party to the trade.

14. COMMODITY.—Any commodity which may be dealt in under Rules or Regulations of the Association.

15. CUSTOMER'S MAN.—When used in these Rules and Regulations, shall be considered as synonymous with Solicitor.

16. EXCHANGE CONTRACTS AND MEMBERS' CONTRACTS.—All contracts of members of the Association, or of firms or corporations registered under the Rules and Regulations, with other members of the Association, or firms or corporations registered under the Rules and Regulations, for the purchase or sale of commodities, or for the purchase, sale, borrowing, loaning, or hypothecation of securities, or for the borrowing, loaning or payment of money, whether occurring upon the floor of the Exchange or elsewhere, are members' contracts.

Exchange Contracts shall include all Members' Contracts:

(1) Made on the Exchange;

(2) Not made on the Exchange, unless made subject to the rules of another Exchange, or unless the parties thereto have expressly agreed that the same shall not be Exchange Contracts.

The provisions of the Rules and Regulations of the Association shall be part of the terms and conditions of all Exchange Contracts and all such contracts shall be subject to the exercise by the Board, the Standing Committees, and the Clearing House of the powers in respect thereto, vested in them by the Rules and Regulations. And all such contracts shall be subject to all Rules or Regulations subsequently adopted, where such Rules or Regulations are expressly made applicable to existing contracts.

17. FLOOR BROKER.—A member who makes contracts for the account of other members.

18. FOLLOWING DAY, or other similar expression.—The following business day.

19. FUTURE DELIVERY CONTRACT.—A contract made on Change for the purchase or sale of any commodity for delivery in the future, pursuant to the Rules and Regulations which call for delivery in store.

*20. GRAIN.—Wheat, corn, oats, rye, barley, flaxseed and soy beans.

21. GRAIN TO ARRIVE.—Grain bought at outside points for shipment to the Chicago District, subject to Chicago Board of Trade weights or Chicago inspection.

22. HOLIDAY.—Any day declared to be a holiday by the statutes of Illinois, or any day upon which the Exchange shall be closed pursuant to a resolution of the Board.

23. LIST.—The list of securities admitted to dealings on the Exchange.

24. MEMBER.—A member of the Association.

25. NON-CLEARING MEMBER.—A member of the Association who does not clear trades in his own name.

26. NON-MEMBER.—A non-member of the Association.

27. NOTICE.—A notice in writing served personally upon the person to be notified, or left at his usual place of business during business hours, or mailed by registered mail to his residence.

28. ON THE EXCHANGE, OR ON CHANGE.—In the Exchange Halls during regular trading hours on business days.

29. OUTSIDE POINTS.—Points outside of the Chicago District.

30. PRESIDENT.—The President of the Association.

31. PRIVILEGE OF THE FLOOR.—The privilege of coming on the floor of the Exchange.

32. RAILROAD RECEIPTS.—Bills of lading, or railroad receipts therefor, or switching receipts.

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*Amended March 14, 1935.

33. REGULATIONS.—The Regulations of the Association adopted by the Board.

34. RULES.—The Rules of the Association adopted by the membership.

In all such expressions as "under the Rules," "according to the Rules," or "subject to the Rules," the word "Rules" shall mean the Charter, Rules, and Regulations of the Association and all amendments thereto.

35. SECRETARY.—The Secretary of the Association.

36. SECURITY OR SECURITIES.—Stocks, Bonds, Notes, Certificates of Deposit or Participation, Trust Receipts, Rights, Warrants, and other similar instruments.

37. SINGULAR.—Shall import the plural, and vice versa, when the sense requires.

38. SOLICITOR.—A member or non-member who solicits business for a member.

39. SPOT GRAIN.—Grain located in the Chicago District subject to sale for immediate delivery.

*40. STOP ORDER OR STOP LOSS ORDER.—An order to buy or sell when the market reaches a specified point. A stop order to buy becomes a market order when the commodity or security sells (or is bid) at or above the stop price. A stop order to sell becomes a market order when the commodity or security sells (or is offered) at or below the stop price.

41. TRADE.—Transaction on Change.

42. TRANSACTION ON CHANGE.—Any purchase or sale of any commodity or security in the Exchange Halls during regular trading hours on business days.

43. TREASURER.—The Treasurer of the Association.

**43-A. VESSEL OWNER, BROKER OR AGENT.—A resident member, whose sole occupation is the management of vessels and/or the conducting of a vessel agency or vessel brokerage business in the chartering of vessel space.

44. VICE-PRESIDENT.—A Vice-President of the Association.

*Amended August 12, 1937; see Regulation 1865 for Odd Lots.

**Adopted October 11, 1933. See "Rulings."

CHAPTER 2.

Meetings of Members and Elections.

*50. Elective Officers.—At the annual election, there shall be elected by the Members of the Exchange, a President, a First Vice-President, a Second Vice-President, five Directors, five members of the Committee of Arbitration, five members of the Committee of Appeals, and two members of the Nominating Committee, all of whom shall be members of the Exchange and are referred to in these Rules as the "elective officers."

†51. Nominating Committee.—The Nominating Committee shall consist of six elected members, whose term of office shall be for three years, and one member appointed for a term of one year by the President, with the approval of the Board. These seven members shall elect their own chairman.

‡51-A. Nominations.—During the month of November following their election, the Nominating Committee shall hold at least three meetings, of which due notice shall be posted on the bulletin board, and all members may attend such meetings, and suggest nominees for the offices to be filled at the following election. In selecting candidates, the Committee shall give special consideration to the desirability of having all interests of the Association represented on the Board and on each of the three elective committees. Prior to December tenth, the Committee shall furnish the Secretary with a list of its nominations, which shall be known as the regular ticket. In case any nominee on the regular ticket withdraws or becomes ineligible it shall become the duty of the Nominating Committee to nominate another candidate. Promptly upon its submission, the list shall be posted by the Secretary upon the bulletin board.

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*Amended December 1, 1933; December 9, 1935; December 9, 1936; March 29, 1939; November 6, 1939; May 12, 1943.
†Amended January 22, 1936; November 6, 1939.
‡Adopted November 6, 1939; Amended November 24, 1943.

Other nominations may be made by petition, signed by not less than forty members in good standing and filed with the Secretary at least fifteen business days prior to the annual election. Promptly upon submission of petitions, the names of candidates shall be posted by the Secretary upon the bulletin board.

*52. Annual Election and Annual Meeting.—The annual election shall be held in the Exchange Hall, on the first Monday after the seventh day of January in each year, between 10 A. M. and 2:30 P. M. The annual meeting shall be held on the next following Monday at 2:30 P. M.

†53. Vote Necessary.—A majority of all votes cast shall be necessary for a choice for President, or for First Vice-President, or for Second Vice-President, but for all other elective offices a plurality shall elect. If no person receives a majority for President, or for First Vice-President, or for Second Vice-President, another ballot shall be taken fifteen days later; and, if again there shall be a failure to elect, a third ballot shall be taken on the fifteenth following day, when a plurality shall elect.

†54. Conduct of Elections.—The election shall be in charge of tellers appointed by the President. If the President appoints as teller a non-member employee of a member, the member shall require such employee to serve as teller upon the established terms. All votes shall be cast by secret ballot. No member shall vote who is not in good standing with the Association. No member shall vote by proxy. Members may vote by mail in the annual election in the manner prescribed in Rule 59. Ballots for Directors, Nominating Committee, and for members of the Committees of Arbitration and Appeal shall be rejected unless marked for a full ticket. The tellers shall receive the ballots and place the same in the ballot box, and shall keep a list of the members voting. After the election, the tellers shall count the ballots and report to the

*Amended March 22, 1937.
†Amended November 24, 1943.

President the names of the persons elected. The ballots shall be preserved for one month, and, upon request of any interested party, the Board may verify the correctness of the returns.

55. SPECIAL MEETINGS OF MEMBERS.—Special meetings of the members of the Association may be called by the Board or by the President. Upon written request of twenty-five members, the Secretary shall call a special meeting. Not less than three days' notice of such special meetings shall be given by the Secretary, either by announcement on Change or by written notice. Calls for special meetings shall state the objects thereof and no other business shall be considered except by unanimous consent.

56. QUORUM OF MEMBERS.—At members' meetings, one hundred members shall constitute a quorum, but a less number may adjourn the meeting to a subsequent time.

57. AMENDMENT OF RULES.—New Rules may be adopted and existing Rules may be amended or repealed by the membership. Proposed amendments may be recommended by the Board, and, upon such recommendation, the President shall call for a special ballot not less than ten days or more than sixty days after the proposed amendment shall have been posted upon the bulletin board. All votes shall be cast by secret ballot. Unless three hundred votes are cast, the vote shall be ineffective, and the President shall call for another special balloting for the resubmission of the proposal. If twenty-five members or more petition for any proposed amendment, the Board, within fifteen days, shall either approve and recommend the proposed amendment, or report to the petitioners the reasons for its disapproval. If, after such disapproval, one hundred members or more petition for such proposed amendment, a special balloting shall be called for in like manner as though the proposed amendment had been recommended by the Board.

58. AMENDMENT OF AMENDMENT OF RULES.—During the ten day period of posting, any proposed amendment may be amended by the majority vote of the Association at a special meeting held for the purpose of considering such amendment. If the proposed amendment is thus amended, the amended amendment shall then be posted for ten days before submission to the membership for balloting.

*59. VOTING BY MAIL.—At the annual election and at all balloting on propositions to amend the Rules, members may vote by mail in the manner and to the extent hereafter provided. At least eight days prior to the balloting, the Secretary shall send to each non-resident member, and, upon written request, shall furnish to each resident member (1) a ballot; (2) a copy of the question on which a vote is to be taken; (3) a small envelope having printed thereon "for ballot only"; (4) a form of letter of transmission addressed to the Secretary with a line for the signature of the member; and (5) a larger envelope addressed to the Secretary. The member shall mark the ballot and place the same in the smaller envelope, and shall then seal the smaller envelope and enclose the same, together with his signed letter of transmission, in the larger envelope, which he shall deliver or mail to the Secretary. The Secretary shall hand all of such letters to the tellers in charge of the balloting. The tellers shall open the outside envelopes and deposit the smaller sealed envelopes in the ballot box, and shall indicate upon their books that the members whose names are signed to the letters of transmission have voted. No ballots received after the polls have closed shall be counted. Non-resident members may vote by mail as above authorized at all ballotings on proposals to amend the Rules, except such Rules as pertain to commissions and brokerage. For the purpose of this Rule, a non-resident member shall be deemed one residing more than fifty miles from the Court House of Cook County, Illinois.

*Amended November 24, 1943.

CHAPTER 3.

GOVERNMENT.

*60. OFFICERS AND DIRECTORS.—The government of the Association, and the control and management of its property and business, shall be vested in the President, the First Vice-President, the Second Vice-President, fifteen Directors (called "Member-Directors") and three Directors (called "Nonmember-Directors") all of whom shall collectively constitute the Board of Directors.

*61. TENURE OF OFFICE.—The President, the First Vice-President, the Second Vice-President and five Member-Directors shall be elected annually at the annual election by the members. The three Nonmember-Directors first to be elected shall be elected at such meeting of the Board of Directors as shall be designated for that purpose by the Board of Directors in advance of such meeting, and the three Nonmember-Directors thereafter to be elected shall be elected by the Board of Directors as soon as conveniently possible following each annual election of Officers and Member-Directors. For each such election of Nonmember-Directors the candidates shall be nominated by the President with the approval of the Executive Committee. The President, the Vice-Presidents and the Nonmember-Directors shall hold office for one year and the Member-Directors for three years but all such Officers and Member-Directors shall hold over until their respective successors are elected and qualified. The term of office of the Nonmember-Directors shall expire at the first meeting of the Board of Directors held after each annual election of Officers and Member-Directors. The Officers and Member-Directors shall take office on the Monday following their election and the Nonmember-Directors shall take office immediately following their election.

*Amended December 1, 1933; amended December 9, 1935 (effective December 10, 1935). Amended December 21, 1937; May 12, 1943.

‡62. QUALIFICATIONS.—No person shall be an elective officer who shall not have been a member of the Exchange for at least one year next preceding his election. A Nonmember-Director may be a bona fide producer of commodities dealt in on the Exchange or a representative of the general public.

†63. QUORUM OF BOARD.—Eleven members of the Board shall constitute a quorum, but a less number may adjourn to a subsequent time.

65. SPECIAL MEETINGS.—Special meetings of the Board may be called by the President, and shall be called by the Secretary upon the written request of five Directors. The Secretary shall give at least one hour's notice of such meetings either by announcement on Change or by written notice. No business may be considered except that embraced in the call.

66. ABSENCE.—If any Director shall absent himself without an excuse from six consecutive regular meetings of the Board, his office may be declared vacant.

67. RULES OF ORDER.—Board meetings and members' meetings shall be conducted according to the established practices of parliamentary law. In case of dispute, Robert's Rules of Order shall govern.

68. EMPLOYEES.—Following each annual election, the Board shall appoint a Secretary and an Assistant Secretary, a Treasurer, and such other employees as may be necessary. The Board, by Regulation or otherwise, may prescribe the duties and fix the compensation of all employees. All employees shall hold office during the will of the Board.

*69. RETIREMENT.—The Board may retire any employee over sixty-five years of age who has been employed by the Association for twenty-five years or more, at an annual retirement compensation equal to one-half his average annual salary during the last five years of his service, but in no event to exceed $1,200 per annum. In case any retired employee at

*Amended July 10, 1940; December 19, 1941.
†Amended January 12, 1934 (effective January 16, 1934); amended December 9, 1935 (effective January 14, 1936); May 12, 1943.
‡Amended May 12, 1943.

the time of or subsequent to his retirement shall be entitled under the laws of any state or the federal government to any assistance compensation, pension, old age benefit, or other form of governmental financial assistance, any such assistance received by him shall be considered as a part, and in lieu of, an equal amount of the retirement compensation to be allowed him by the Board. In case the governmental financial assistance equals or exceeds one-half the average annual salary during the last five years of the employee's service, the Board shall not allow any retirement compensation, and if the governmental assistance is less than the Board's retirement compensation, the Board may pay the employee (or retired employee already receiving retirement compensation) the difference between the amount of the governmental assistance and the retirement compensation, but in no event shall the combined government assistance and retirement compensation exceed $1,200 per annum.

70. ANNUAL REPORT TO MEMBERS.—The Board, at each annual meeting of the members, shall make a complete report of all receipts and expenditures for the preceding year and an exhibit of the financial affairs, property, and general condition of the Association.

71. EXCHANGE HALLS.—The Board shall provide Exchange Halls which shall be open for trading during regular hours, except on Sundays and holidays. Complete jurisdiction over the Exchange Halls and all other parts of the building of the Association is vested in the Board.

72. REGULATIONS.—The Board may adopt Regulations not in conflict with the Rules, which shall have the binding effect of Rules.

†73. VACANCIES.—If a vacancy occurs in any elective office due to death, resignation or other reason, such vacancy may be filled by a successor elected by the Board of Directors to serve until the next annual election or his successor is elected and qualified; any such vacancy in any Nonmember-

†Amended May 12, 1943.

Directorship shall be likewise filled but the successor will serve only for the unexpired portion of the term.

74. PRESIDENT.—The President shall be the general executive officer of the Association and the Board, and shall exercise such powers and perform such duties as generally appertain to that office. Subject to the approval of the Board, he may appoint special committees and all other committees where the method of appointment is not otherwise provided for. He may also temporarily fill any vacancy in any appointive office. He shall preside at all Association and Board meetings. He shall execute all contracts upon behalf of the Association.

*75. VICE-PRESIDENTS.—The First Vice-President shall perform the duties of the President in his absence or disability. The Second Vice-President shall perform the duties of the President in the absence or disability of the President and the First Vice-President. In the absence or disability of the President and both Vice-Presidents, the Board may choose temporarily an Acting President.

76. SECRETARY.—The Secretary shall exercise such powers and perform such duties as generally appertain to that office. He shall also be charged with the following specific duties:

(a) To take charge of the books, papers, and corporate seal of the Association;

(b) To attend all meetings of the Association and the Board, and to keep official records thereof;

(c) To attend, in person or by representative, all meetings of the Committees on Arbitration and Appeals, and to keep an official record of the proceedings thereof. He shall also give notice to such Committees when their services are required, issue the necessary notices and papers to parties, and deliver to the interested parties copies of all awards or findings;

(d) To give notices when required of all Association and Board meetings;

(e) To conduct the correspondence of the Association under the direction of the proper officers;

*Amended December 21, 1937.

(f) To furnish to the Chairman of every Special Committee a copy of the resolution whereby such Committee was created;

(g) To post all notices which may be required to be posted upon the bulletin board;

(h) To collect all money due the Association for assessments, fines, fees, and otherwise, and to pay the same to the Treasurer;

(i) To keep his office open during usual business hours;

(j) To see that the rooms and property of the Association are kept in good order;

(k) To attest, upon behalf of the Association, all contracts and other documents requiring authentication;

(l) To issue to all inspectors, gaugers, weighers, and measurers, appointed by the Board, official certificates of their appointments under the seal of the Association;

(m) To permit members to examine the records of the Association upon reasonable request;

(n) To post on the bulletin board from time to time the names of all warehouses, the receipts of which are declared regular for delivery, and also, upon direction of the Board, to post any fact tending to impair the value of receipts issued by such warehouses;

(o) To perform such other duties as the Board may from time to time direct;

(p) To post the names of all securities admitted to or stricken from the List.

77. ASSISTANT SECRETARY.—The Assistant Secretary shall perform such duties as the Secretary or the Board may require, and shall act as Secretary in the absence or disability of the Secretary.

78. TREASURER.—The Treasurer shall have general charge of all funds belonging to the Association, and shall be charged with the following specific duties:

(a) The Treasurer shall receive from the Secretary deposit of funds belonging to the Association. Checks against such funds shall be signed and countersigned by any two of the following officers, namely, the President, First Vice-President, Second Vice-President, Secretary and Assistant Secretary;

(b) To make an annual report to the Association of all receipts and disbursements;

(c) To keep all of his accounts in permanent books of account belonging to the Association, which books shall at all times be open to the examination of the Board or any committee thereof.

79. DEPARTMENTS.—The Board is authorized to establish and maintain such departments as it may deem necessary from time to time, and to make all needful Regulations applicable thereto. The following are specifically authorized:

(a) A New Building Fund Department to perform the duties prescribed by former Rule IV, Section 23. The charges levied by such Rule, and the conditions pertaining thereto, are continued in effect. (See Rule 700);

(b) A Transportation Department to perform such services as may be required in connection with traffic and transportation problems;

(c) A Sampling Department to sample commodities for such purposes as may be prescribed;

(d) An Inspection Department to standardize and inspect commodities and the packing thereof;

(e) A Car Inspection Department to inspect incoming cars loaded with grain;

(f) A Weighing Department to weigh grain and other commodities and to issue official certificates of weight therefor;

*(g) A Custodian Department to furnish a custodian to take and hold possession of commodities placed under his control as agent for such persons as may be designated;

(h) A Market Report Department to compile and make proper disposition of the market reports and records of the Association;

(i) A Warehouse Department to regulate and control warehouses, the receipts of which are made regular under the Rules and Regulations of the Association.

80. CORNERS IN SECURITIES.—If, at any time, in the opinion of the Board, a corner has been created in a security listed, or a single interest or group has acquired such control of a security so listed that the same cannot be obtained for delivery on

*Approved Illinois Commerce Commission June 29, 1933.

existing contracts except at prices and on terms arbitrarily dictated by such interest or group, the Board may postpone the time for deliveries on Exchange contracts therein, and may from time to time further postpone such time or may postpone deliveries until further action by the Board, and may at any time by resolution declare that if such security is not delivered on any contract calling for delivery thereof at or before the time to which delivery has been postponed or which has been fixed by the Board for such delivery, such contract shall be settled by the payment to the party entitled to receive such security or by the credit to such party of a fair settlement price, determined as hereinafter provided. If the parties to any contract which is to be settled on the basis of such fair settlement price do not agree with respect thereto, such fair settlement price and the date for the payment of the same may be fixed by the Board. The Board before fixing the same shall give the parties to the contract which is to be settled on the basis thereof an opportunity to be heard either before the Board or before a Special Committee appointed for that purpose. Any such Special Committee shall report the testimony taken, together with its conclusions thereon, to the Board, which may act upon such report without further hearing or, in its discretion, may accord the parties a further hearing before acting thereon.

*81. FLUCTUATIONS IN PRICES.—The Board at any time, upon ten hours' notice by Regulation, may provide that there shall be no trading during any day in any grain, provisions, or cottonseed oil for delivery in any specified month at prices more than a fixed limit above or below the average closing price of the preceding business day.

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*Amended June 29, 1933; amended January 12, 1934; amended October 14, 1935; December 9, 1936, and December 14, 1938. (See Regulations 1823 and 1823-A.)

†82. BUSINESS CONDUCT COMMITTEE.—(a) Membership—The President, with the approval of the Board, shall appoint from the membership three members of a Business Conduct Committee who are not serving as Directors or officers of the Association, one for a term expiring February 1, 1935, one for a term expiring February 1, 1936, and one for a term expiring February 1, 1937, and thereafter each year, the President, with the approval of the Board, shall appoint one member of such Committee for a period of three years dating from February 1 in each year. The three members thus appointed, together with the President of the Association, or in his stead, a Director of the Association, designated by the President, and the President of the Clearing House, or in his stead a Governor of the Clearing House, designated by the President thereof, shall constitute the Business Conduct Committee and be the regular members thereof. If neither the President nor a Governor of the Clearing House is able to serve as a regular member of the Committee, the President of the Association shall appoint in his stead any member of the Association. A vacancy in the Committee shall be filled for the unexpired term in the same manner as is provided above.

(b) Qualifications of Members—No person shall serve as regular or alternate member unless and until he has first pledged himself to the Association that, during the period of such service, he will not, (1) speculate for his personal account in any commodity which is traded in on the Board of Trade of the City of Chicago. (2) publish, divulge, or make known in any manner except when reporting to the Directors or to a committee concerned with such information, or when called upon to testify in any judicial or administrative proceeding, any facts regarding the business of any person or any other confidential information which may come to the knowledge of such member in his official capacity. No

†Adopted April 9, 1934. Amended December 9, 1936. Amended January 30, 1941.

member shall act on any matter in which he has a financial or other prejudicial interest. For the purposes of this rule, a financial interest shall include not only that of the member himself but also that of a partner, a dependent, a firm of which he is a co-partner, or a corporation of which he is an officer or stockholder. The other members of the Committee shall determine whether any member has such financial or other prejudicial interest.

(c) Business Conduct Committee on Particular Matter—If the Business Conduct Committee shall determine that it is improper for any or all of its regular members to serve during the consideration and decision of any particular matter, or if any or all the regular members shall be unable to serve during the consideration and decision of any particular matter, the Business Conduct Committee may request the President to appoint an alternate or alternates to sit throughout the investigation, hearing, and decision of such matter. The President shall have the power to appoint any member or members as such alternate or alternates. When so appointed such alternate or alternates shall, with respect to such particular matter, have all the powers and duties of the regular member or members for whom he is or they are acting, and the "Committee on Particular Matter," consisting of such alternate or alternates, and the remaining regular members of the Business Conduct Committee, if any, shall with respect to such particular matter have all the duties and powers of the regular Business Conduct Committee. During such period as a Committee or Committees on a Particular Matter or Matters are functioning, the regular Business Conduct Committee and the regular members thereof shall continue to have all the powers and to perform all of the duties concerning matters not under consideration by a Committee or Committees on Particular Matters.

(d) Duties of Committee—The Committee shall determine the manner and form in which its proceedings shall be conducted. A representative of the Commodity Exchange Ad-

ministration may be invited to attend any or all meetings of the Committee. The Committee shall be charged with the duty and authority to prevent manipulation of prices and the cornering of any commodity as provided in Section 5 (d) of the Commodity Exchange Act, and shall also have general supervision of the business conduct of members, registered partnerships and corporations, particularly in so far as such conduct affects (1) non-member customers; (2) the public at large; (3) the State Government; (4) the Federal Government; (5) public opinion; and (6) the good name of the Association. The Committee in performing its duties may investigate the dealings, transactions, and financial condition of members, registered partnerships and corporations, may examine their books and papers upon request, and may prescribe such capital requirements as it deems appropriate. The Committee may employ such auditors and other assistants as it may deem necessary, and all expenses incident thereto shall be payable from the funds of the Association. Members under investigation shall be advised of the nature of the investigation, and may appear before the Committee and offer such testimony, explanation, or justification as they may wish. If, as the result of any investigation, the Committee finds that a particular course of conduct is, or thereafter would be, unfair or unjust, or in violation of the law or the Rules of the Association, or calculated to impair the good name of the Association, the Committee shall notify the member in writing of its conclusions, and direct such member to cease and desist from such past or proposed conduct. The finding and conclusions of the Committee in the premises shall be final and without appeal. Any member who fails to appear before the Committee pursuant to its request, or to submit his books and papers to the Committee for examination, or who conducts himself in violation of any order of the Committee after having been duly notified thereof, shall be charged with an offense against the Association, and if found guilty shall either be expelled or suspended by the Board.

*83. NONMEMBER DIRECTORS.—Each Nonmember-Director shall be deemed to have agreed to observe and be bound by the charter, rules and regulations of the Association (and all amendments subsequently made thereto) while such a Nonmember-Director. He shall not be entitled to membership in or incur any obligation to the Board of Trade Gratuity Fund, and rules and regulations in regard thereto shall have no application to him. He shall have the right to go upon the floor of the Exchange, but shall not have the right to transact business thereon, and shall have only such other rights as are specifically granted to Directors under the rules and regulations. The Board of Directors is authorized to pay traveling expenses for Nonmember-Directors.

*Adopted May 12, 1943.

CHAPTER 4.

MEMBERSHIPS.

100. QUALIFICATIONS.—Any male person of good character and credit and of lawful age is eligible for membership.

101. APPLICATION FOR MEMBERSHIP.—Application for membership shall be in writing, signed by the applicant, and endorsed by two members.

102. MEMBERSHIP COMMITTEE.—All applications for membership shall be referred to the Membership Committee, before whom the applicant and his sponsors must appear in person for examination if requested.

103. POSTING APPLICATIONS.—An application for membership must be posted upon the bulletin board for ten days before the applicant may be elected to membership.

*104. VOTE REQUIRED TO ELECT.—Election to membership shall be by secret ballot of the Board, and during 1936 twelve affirmative votes and thereafter ten affirmative votes shall be necessary to elect. If three negative votes are cast, the applicant shall not be elected.

†105. PROCURING MEMBERSHIP.—No person shall become a member unless he procures a membership by assignment. An applicant must qualify within thirty days after he has been elected and notified; otherwise his election shall be deemed vacated.

106. MEMBERSHIP OBTAINED BY FRAUD.—A membership obtained by fraudulent representations or concealment shall be disposed of by the Board.

107. AGREEMENT TO OBSERVE RULES AND REGULATIONS.—Applicants for membership shall be required to sign a written agreement to observe and be bound by the Charter, Rules, and Regulations of the Association, and all amendments subsequently made thereto.

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*Amended January 12, 1934; amended December 9, 1935 (effective January 14, 1936).

†See Regulation 1807.

108. ASSESSMENTS.—The Board, previous to the annual meeting, shall levy assessments upon the memberships to meet the estimated financial requirements of the ensuing year and any deficit of the preceding year, and the amount of such assessments shall be reported to the members at the annual meeting.

***108-B. MEMBERS IN MILITARY SERVICE.—The Board shall have authority to remit the assessments of a member during the period in which such member is in the military service of the United States, as such service is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as passed by Congress and as it may be amended.**

****109. NEGLECT TO PAY ASSESSMENT.—Any member who neglects to pay his assessment, or installments thereof, within thirty days after such assessment, or installments thereof, has been called for payment may be suspended until such assessment, or installments thereof, is paid. If a member neglects to pay such assessment, or installments thereof, during a period of six consecutive months, his membership (a) may be disposed of by the Board; (b) or may be forfeited and cancelled by the Board.**

†110. TRANSFER OF MEMBERSHIP.—Membership in this Association is a personal privilege, not subject to transfer except as herein authorized. When a member wishes to transfer his membership he shall sign an offer to transfer, in such form as shall be prescribed by the Board. If a satisfactory purchaser is approved for membership the transfer may be consummated upon the payment by the purchaser to the Association of a transfer fee. The membership of a deceased member may be transferred by his legal representative.

A member who has made a contract for the transfer of his membership shall not, after the tenth day of the posting of

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*Adopted January 30, 1941. See Regulation 1844.
**Amended March 22, 1937; June 16, 1941; June 12, 1942.
†See Regulation 1807. Amended March 22, 1937; June 2, 1937.

notice of the proposed transfer, make any contracts on the Exchange, pending the approval or disapproval of the Board of the proposed transfer.

On the tenth day after the posting of notice of proposed transfer of membership, all Exchange contracts of the member proposing to make the transfer shall mature, and, if not settled, shall be closed out as in the case of an insolvency, unless the same are assumed or taken over by another member of the Association.

Notice of a transfer to be made by the Board shall be posted as in the case of a voluntary transfer and shall have the same effect in respect to open contracts and unmatured debts and obligations of the former member as in the case of a voluntary transfer.

*111. Transfer Fees.—No transfer of membership may be consummated unless the purchaser pays to the Association a transfer fee amounting to 5 per cent of the sale price of the membership, provided, however, that no transfer fee so collected shall be less than $250 or more than $500. All transfer fees so collected (including those collected prior to March 22, 1937), shall be used to purchase, retire or reduce the mortgage obligations of the Chicago Board of Trade Safe Deposit Company.

†112. Proceeds of Membership.—Upon any transfer of membership, whether made by a member voluntarily or by the Board, the proceeds thereof shall be applied to the following purposes and in the following order of priority, viz.:

First. The payment of all dues, fines, contributions, and charges payable to the Association by the member whose membership is transferred, and all indebtedness of such member thereto and to the Gratuity Fund;

Second. Payment of all dues, fines, assessments and charges payable by such member to the Clearing House and all indebtedness of such member thereto;

*Amended February 25, 1932; March 22, 1937; amended June 2, 1937.
†Amended December 9, 1936. See "Rulings."

Third. The payment to creditors, who are members of the Association or who are registered corporations or partnerships under Rule 226, of all filed claims arising from Members' Contracts if and to the extent that the same shall be determined by the Board to have arisen out of contracts had between the parties thereto in the ordinary course of business, and shall have been allowed by the Board.

All contracts which do not, pursuant to Section 110 of this Chapter, mature by reason of the transfer of the membership may for the purposes hereof be treated as though they had matured pursuant to said Section, and the amount due thereon may be fixed and determined by the Board on the basis of market values or such other basis as shall be deemed fair and just by the Board.

If a claim based on a contract is contingent or the amount that will ultimately be due thereon cannot for any reason immediately be ascertained and determined, the Board may out of the proceeds of the membership reserve and retain such amount as it may deem appropriate pending the determination of the amount due on such claim.

A claim shall be allowed by the Board only for the amount due thereon if the proceeds of the sale of all collateral held therefor or the fair value of such collateral as determined by the Board has been credited thereon and the Board may require that all such collateral shall be disposed of before passing on the claim;

Fourth. If the proceeds of a transfer of membership are insufficient to pay all filed claims arising out of contracts allowed by the Board, such claims shall be paid pro rata, except as provided in Rules 113 and 114 of this Chapter;

Fifth. The surplus, if any, of said proceeds shall be paid to the person whose membership is transferred or to his legal representatives upon the execution by him or them of a release or releases satisfactory to the Board.

*113. Filing Claims.—A member to establish his claim and to become entitled to his rights under Rule 112 of this Chapter to share in the proceeds of a membership, shall file a statement of his claim before the membership has been trans-

*Amended March 16, 1933.

ferred. Claims if not so filed and allowed by the Board may be paid out of any surplus after all other claims allowed by the Board have been paid in full and shall be paid in preference to claims referred to in Rule 114 of this Chapter.

114. CLAIMS OF PARTNERS.—Claims growing out of transactions between partners, who are members of the Association, shall not share in the proceeds of the membership of one of such partners until all other claims as allowed by the Board have been paid in full.

*115. DECEASED OR INCOMPETENT MEMBER.—When a member dies, or when a conservator is appointed for him or his estate, his membership may be disposed of by the Board. If the deceased or incompetent member has neglected to pay assessments, Rule 109 shall apply to the disposition of his membership by the Board.

116. EXPELLED MEMBER.—When a member is expelled or becomes ineligible for reinstatement, his membership may be disposed of forthwith by the Board.

†117. CREDITORS OF DECEASED, INCOMPETENT, SUSPENDED, OR EXPELLED MEMBER.—The death, incompetency, expulsion, or suspension of a member shall not affect the rights of creditors under the provisions of Rule 112 of this Chapter.

†118. DEATH OR INCOMPETENCY OF CREDITOR MEMBER.—When a member is in debt to another member, the death or incompetency of the creditor member or the transfer of his membership, either by his estate or by the Board, shall not affect the rights of said creditor member, his firm, corporation, or estate, to share in the proceeds of the membership of the debtor member under this Chapter, in the same manner and to the same extent as if such creditor member had not died or become incompetent or his membership had not been transferred.

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*Amended December 9, 1936; June 16, 1941.
†Amended December 9, 1936.

119. INSOLVENCY.—A member who fails to perform his contracts or is insolvent, or who is a partner in a firm registered upon the Association, or who is registered for a corporation, which fails to perform its contracts or is insolvent, shall immediately inform the Secretary in writing that he or his firm or corporation is unable to meet his or its engagements, and prompt notice thereof shall be given to the Association. He shall thereby become suspended from membership until, after having settled with his creditors or the creditors of his firm or corporation, he has been reinstated by the Board.

120. ANNOUNCEMENT OF SUSPENSION.—Whenever it shall appear to the President that a member, firm, or corporation registered upon the Association has failed to meet his or its engagements, or is insolvent, or the President has been advised by the Business Conduct Committee or the Board of Governors of the Clearing House that such member, firm, or corporation is in such financial condition that he or it cannot be permitted to continue in business with safety to his or its creditors or the Association, the Secretary shall announce to the Association the suspension of such member, firm, or corporation, which suspension shall continue until the member has been reinstated as provided in the last preceding Rule.

121. INSOLVENT MEMBER.—When announcement is made of a suspension of a member, firm, or corporation pursuant to the Rules and Regulations, members having Exchange contracts with the member, firm, or corporation may proceed to close the same on the Exchange or in the best available market, except in so far as the By-Laws and Resolutions of the Clearing House are applicable and provide the method of closing. Should a contract not be closed, as above provided, the price of settlement shall be fixed by the Board.

122. INVESTIGATION.—Every member suspended under the provisions of this Chapter shall immediately afford every facility required by the Board for the investigation of his affairs, and shall, after the announcement of his suspension, file with the Secretary a written statement covering all infor-

mation required by the Board, including a complete list of his creditors and the amount owing to each.

123. SUSPENDED MEMBER.—TIME FOR SETTLEMENT.—If a member suspended under the provisions of this Chapter fails to settle with his creditors and fails to apply for reinstatement within one year from the date of his suspension, or within such further time as the Board may grant, or fails to obtain reinstatement as elsewhere herein provided, his membership may be disposed of by the Board.

The Board may, by a two-thirds vote of the members present, extend the time of settlement for periods not exceeding one year each.

124. REINSTATEMENT.—When a member suspended under the provisions of this Chapter applies for reinstatement, notice thereof shall be given by the Secretary to the members of the Association by notifying each member of such application directly and by posting notice upon the bulletin board at least fifteen days prior to the consideration by the Board of such application. The applicant shall furnish to said Board the list of his creditors, a statement of the amounts originally owing and the nature of the settlement in each case. If he furnishes satisfactory proof of settlement with all of his creditors, the Board shall proceed to ballot for him

Failing to receive the approving vote of two-thirds of the members of the Board present, the applicant shall be entitled to be balloted for at two subsequent regular meetings of the Board to be designated by himself; provided, however, that the three ballots to which the applicant shall be entitled, shall be within one year from the date of his suspension, or within such further extended time for settlement as may have been granted by the Board.

Whenever the Board shall determine that a member suspended under the provisions of this Chapter has been guilty of irregularities or unbusinesslike dealings, said member may

by a two-thirds vote of all the members of the Board be declared ineligible for reinstatement.

125. Discipline During Suspension.—A member suspended under the provisions of this Chapter may be proceeded against by the Board for any offense committed by him either before or after the announcement of his suspension, in all respects as if he were not under suspension.

126. Commission Rates for Suspended Members.—A member suspended under the provisions of this Chapter may, for the purpose of liquidation only, have his business transacted at members' rates.

127. Membership Transfer.—All purchases or sales of membership privileges shall be made through the Office of the Secretary pursuant to Regulations adopted by the Board and no commission or other compensation for services in connection with the purchase or sale of a membership in the Association shall be paid.

128. Office Address.—Every member shall register with the Secretary an address and subsequent changes thereof where notices may be served.

129. Branch Offices.—Members may, with the consent and approval of the Market Report Committee, establish offices other than main offices. Such offices must be in charge of a partner or of a manager or clerk acceptable to said Committee. All offices of members and all employees thereof shall be subject to such Rules as may be prescribed from time to time by the Market Report Committee with the approval of the Board.

The privilege provided for under this Rule shall extend to a branch house or branch office only when conducted under the same name as the parent firm or corporation and when the ownership interests therein are identical with the respective interests in the parent firm or corporation.

130. SUSPENSION FOR DEFAULT.—Where a member fails or refuses to perform an exchange contract with or pay obligations arising out of such contracts to another member, the defaulting member, on complaint of the other member, shall be suspended until the contract is performed or the debt satisfied. Registered firms and corporations shall be deemed members under this Rule. If the member alleged to be in default denies the default, he shall be entitled to have the claim arbitrated. If the claim is admitted or established by a final arbitration award, the defaulting member shall be suspended until he has satisfied and discharged all debts owing to members on exchange contracts. Application for reinstatement shall allege, under oath, that all such debts have been discharged, and notice of such application shall be posted on the bulletin board fifteen days prior to the hearing of such application.

*131. GRATUITY FUND.—The Board, by Regulation, may provide, subject to such conditions as may be prescribed, that all persons who hereafter become members of the Association shall also become members of the Board of Trade Gratuity Fund.

*See Regulation 1808.

CHAPTER 5.

Offenses and Punishment.

140. Expulsion and Suspension from Membership.—Unless otherwise specifically provided, the penalty of suspension from membership may be inflicted, and the period of suspension determined, by the vote of a majority of the members of the Board present, and the penalty of expulsion from membership or of ineligibility of a suspended member for reinstatement may be inflicted by a vote of two-thirds of the members of the Board present.

141. Inequitable Proceedings.—A member who shall have been adjudged by a majority vote of the members of the Board present guilty of a violation of any Rule or Regulation of the Association or any By-Law or Resolution of the Clearing House, regulating the conduct or business of members, or guilty of violating any agreement made with the Association, or guilty of fraud, dishonorable or dishonest conduct, or of conduct or proceedings inconsistent with just and equitable principles of trade, or be guilty of making default on contracts for future delivery (unless the Board shall determine that such default was unintentional), may be suspended or expelled as the Board may determine, unless the offense is the violation of a Regulation or Rule for which a different penalty has been provided, in which case the other penalty may be imposed.

142. Fictitious Transactions.—A member who shall be adjudged by a majority of the members of the Board present guilty of making a fictitious transaction or of giving an order for the purchase or sale of commodities or securities, the execution of which would involve no change in ownership, or of executing such an order with knowledge of

its character, shall be suspended or expelled as the Board shall determine.

143. DEMORALIZATION OF MARKET.—Purchases or sales of commodities or securities, or offers to purchase or sell commodities or securities, made for the purpose of upsetting the equilibrium of the market and bringing about a condition of demoralization in which prices will not fairly reflect market values, are forbidden and any member who makes or assists in making such purchase or sale or offers to purchase or sell with knowledge of the purpose thereof, or who, with such knowledge shall be a party to or assist in carrying out any plan or scheme for the making of such purchases or sales or offers to purchase or sell, shall be deemed to be guilty of an act inconsistent with just and equitable principles of trade.

144. MISSTATEMENTS.—Whenever the Board shall adjudge that a member has made a misstatement upon a material point to the Board, or to a Standing or Special Committee, or to the Executive Committee, or to the Board of Governors of the Clearing House, or on his application for membership has made a material misstatement, the Board shall suspend or expel said member as it may determine.

Whenever the Board shall adjudge that a member, prior to his application for membership, has been guilty of a fraudulent, dishonorable, or dishonest act and that the facts and circumstances thereof were not disclosed on his application for membership, the Board may expel or suspend such member.

*145. ACTS DETRIMENTAL TO WELFARE OF THE ASSOCIATION.—A member, who shall have been adjudged by a majority vote of the members of the Board present guilty of any act which may be detrimental to the interest or welfare of the Association, may be suspended or expelled as the Board may determine, unless the offense is the violation of a Rule or Regulation for which a different penalty has been provided, in which case the other penalty may be imposed.

*See "Rulings."

146. RECKLESS DEALING.—Reckless and unbusinesslike dealing is inconsistent with just and equitable principles of trade.

147. INVITATION TO SUBSCRIBE.—When securities are offered for subscription by a member, and the invitation to subscribe states the amount thereof to be presently offered, it is not consistent with just and equitable principles of trade for such member to deliver said securities to an amount greater than that stated in said invitation to subscribe.

148. INVESTMENT TRUST CORPORATION.—Participation by a member, or by a firm or corporation, registered under the provisions of these Rules and Regulations, in the formation or management of investment trust corporations, or similar organizations, which in the opinion of the Board involve features which do not properly protect the interests of investors therein, may be held to be an act detrimental to the interests or welfare of the Association.

149. CIRCULATION OF RUMORS.—The circulation in any manner of rumors of a sensational character by a member, in any case where such act does not constitute fraud or conduct inconsistent with just and equitable principles of trade, is an act detrimental to the interest or welfare of the Association.

Members shall report to the Secretary any information which comes to their notice as to the circulation of such rumors.

150. OTHER OFFENSES.—The Board may expel or suspend any member whom it shall determine to have:

(a) Attempted extortion;

(b) Traded systematically against the orders or position of his customers;

(c) Manipulated prices of or attempted to corner the market in any commodity or security;

(d) Disseminated false or inaccurate market information;

(e) Traded or accepted margins after insolvency;

(f) Made any trade for the account of or given up the name of any clearing member without authority from such clearing member;

(g) Been deprived of the privilege of trading under Section 6(b) of the Grain Futures Act;

(h) Traded for any person deprived of the privilege of trading under Section 6(b) of the Grain Futures Act;

(i) Accepted an order or made a trade for the Manager, Assistant Manager, or other employee of the Clearing House except in the exercise of their official duties;

(j) Failed to comply with an order of the Committee of Appeals or, if no appeal is taken, with an award of the Committee of Arbitration.

The enumeration in this Rule of specific offenses shall not limit or impair the right of the Board to proceed against any member under any other Section of the Rules and Regulations.

*151. Discretionary Orders.—No member, corporation, or firm shall permit an employee to accept discretionary orders for the purchase or sale of commodities or securities, nor shall any such employee exercise such discretion.

152. Bucketshop.—No member shall be directly or indirectly interested in or associated in business with, or have his office directly or indirectly connected by public or private wire or other method or contrivance with, or transact any business directly or indirectly with or for

(a) Any bucketshop; or

(b) Any organization, firm, or individual making a practice of dealing on differences in market quotations; or

(c) Any organization, firm, or individual engaged in purchasing or selling commodities or securities for customers and making a practice of taking the side of the market opposite to the side taken by customers.

153. Testimony and Production of Books and Papers.—If a member of the Association is required by the Board to submit his books and papers, or the books and papers of his

*See Regulation 1820 and "Rulings."

firm, or corporation, or any portion thereof, to said Board, or to any Standing or Special Committee, or to furnish any information to or to appear and testify before, or to cause any of his partners or employees to appear and testify before such Board or such Committee, and shall fail or refuse to comply with such requirement, he may be suspended or expelled as the Board may determine.

154. TESTIMONY, ETC., BEFORE OTHER EXCHANGES.—If the Board shall deem it is to the interest and welfare of the Association, or to the public interest, or in the interest of just and equitable principles of trade, to facilitate the examination by the authorities of another exchange of any transaction in which a member of the Association has been concerned and that the testimony of such member, his partners, or employees, or his books and papers, or the books and papers of his firm, or corporation, or any partner therein are material to such examination, and shall direct such member to appear and testify, or to cause any of his partners or employees to appear and testify, or to produce such books and papers before the authorities of said other exchange, or any committee thereof, for the purposes of such examination, and the member of the Association shall refuse or fail to comply with such direction, he may be adjudged guilty of an act detrimental to the interest or welfare of the Association.

155. CHARGES—FORM OF.—An accusation, other than those specified in Rule 158, charging a member before the Board with having committed an offense shall be in writing; it shall specify the charge or charges against such member with reasonable detail and shall be signed by the person or persons making the charge or charges. A copy of such charge or charges shall be served upon the accused member either personally or by leaving the same at his office address during business hours or by mailing it to him at his place of resi-

dence. He shall have five business days from the date of such service to answer the same or such further time as the Board in its discretion may deem proper. The answer shall be in writing, signed by the accused member, and filed with the Secretary. Upon the answer being filed, or if the accused shall refuse or neglect to make answer as hereinbefore required, the Board shall, at a regular or special meeting thereafter, proceed to consider the charge or charges; if such meeting be a special meeting, notice of the object thereof shall be sent to the Board. Notice of such meeting shall be sent to the accused member; he shall be entitled to be personally present thereat and shall be permitted in person to examine and cross-examine all the witnesses produced before the Board and also to present such testimony, defense, or explanation as he may deem proper. After hearing all the witnesses and the member accused, if he desires to be heard, the Board shall determine whether said member is guilty of the offense or offenses charged. If it determines that the accused is guilty, the Board may expel such member or may suspend him, as the case may be; the result shall be announced to the Association by the Secretary and a written notice thereof served upon the member in the manner hereinbefore provided. The finding of the Board shall be final and conclusive.

156. Investigating Committee.—If at any time the Board shall have reason to suspect that any member has been guilty of an offense against the Association and no accusation charging such offense has been filed, the Board shall appoint a Committee outside of its own number to investigate whether there is just ground for such suspicion. If the Committee decides that there is just ground for such suspicion, it shall file with the Board a written accusation against the suspected member charging him with a specific offense and stating in detail the acts or omissions complained of. Upon the trial of such charges, the Chairman or some other member of the

Committee which made the charges shall conduct the prosecution.

*157. Rehearing.—A suspended or expelled member may petition the Board of Directors for a rehearing. Upon presentation of the petition, the Board of Directors, by a majority vote, may instruct the President to appoint a committee of three members of the Board to examine the petition and determine whether or not the petitioner is entitled to a rehearing on the basis that his conviction was the result of false testimony or was otherwise unjust or improper.

After the committee reports its findings to the Board, the Board may, upon a majority vote, order a rehearing of the case. At such rehearing, the original charges shall be the basis upon which the rehearing is conducted. If it is found, upon a rehearing before the Board, that such member was wrongfully suspended or expelled, the suspension or expulsion may be mitigated in the discretion of the Directors. No suspension or expulsion shall be changed if three or more Directors vote against such action.

The petition of a suspended or expelled member for a rehearing shall be posted upon the bulletin board of the Exchange for at least one week prior to its presentation to the Directors.

158. Other Offenses — Summary Proceedings. — Disorderly conduct in or about the building of the Association, smoking or using profane or obscene language in the Exchange Halls, or the violation of any Regulation of any Standing or Special Committee which Regulation has been approved by the Board, may be held by the Board to be an offense. The penalty for such an offense shall be a fine or denial of the privilege of the floor for a period not exceeding sixty days or both. Such denial shall not be considered to be a suspension. Should a member be accused before the Board

*Amended January 12, 1934 (effective January 16, 1934); amended December 9, 1935 (effective January 14, 1936).

of having committed such an offense, the Board may proceed summarily, and the method of procedure required by Rule 155 or Rule 156 shall not apply. The accused shall be summoned before the Board, informed of the nature of the accusation against him, and afforded an opportunity for explanation by personal or other testimony. If the Board shall determine by a majority vote of its members present that the accused is guilty, it may, by a similar vote, impose the penalty for the offense.

159. SUSPENDED OR EXPELLED MEMBER DEPRIVED OF PRIVILEGES.—When a member is suspended by the Board, such member shall be deprived during the term of his suspension of all rights and privileges of membership (except those pertaining to the Gratuity Fund), but he may be proceeded against by the Board for an offense other than that for which he was suspended.

The expulsion of a member terminates all rights and privileges arising out of his membership, except such rights in respect to the proceeds of the transfer thereof as he may have under the provisions of Chapter 4 hereof.

160. PROFESSIONAL COUNSEL EXCLUDED.—No member of the Association shall have a right to be represented by professional counsel in any investigation or hearing before the Board or any Standing or Special Committee.

161. INCRIMINATING EVIDENCE.—Upon any investigation or trial before the Board, or before any committee, or before any other tribunal of the Association, no member shall be required to answer, or be subject to any penalty for failing to answer any question, when such member shall make oath that the answer, if given, would convict or tend to convict such member of the violation of any law of the United States or any state.

CHAPTER 6.

Arbitration and Appeal.

180. Committees.—The Committee of Arbitration and the Committee of Appeals shall each consist of ten members. Their term of office shall be for two years.

181. Qualifications.—No person shall be a member of either Committee who shall not have been a member of the Association for at least one year next preceding his election. No person shall be a member of both Committees at the same time. No person shall be a member of either Committee who, at the same time, is a member of the Board.

182. Quorum and Vote.—Five members of either Committee shall constitute a quorum. A majority of the sitting members of either Committee shall control.

183. What Disputes May Be Arbitrated.—The policy of the Association is to encourage, but not to compel, the arbitration of disputes. Persons (members or non-members) desiring to arbitrate any dispute shall notify the Secretary, who shall thereupon submit to the parties for their signatures, a form of agreement, submitting the dispute to arbitration. After the parties have signed such agreement, the Secretary shall refer the dispute to the Committee on Arbitration.

184. Time of Trial.—Any case submitted for arbitration shall be tried before the Committee of Arbitration within ten days from the date of submission, unless good cause for a continuance can be shown to the Committee.

185. Oath of Arbitrators.—Before taking office, the members of both Committees shall be sworn faithfully and fairly

to hear, examine, and determine all controversies according to the principles of equity and justice and to make just and true awards according to the best of their understanding. Such oath may be administered by any person authorized to administer oaths.

186. CONDUCT OF TRIAL.—The Committee of Arbitration shall hear all evidence submitted by the parties relative to such controversy, which evidence shall be taken under oath or affirmation and shall be duly recorded. The member resisting the claim may make any defenses before the Committee which would be available to him in a court of law or equity.

187. AWARD OF COMMITTEE OF ARBITRATION.—After such hearing, the Committee of Arbitration shall file its award in writing with the Secretary, who shall deliver copies thereof to all interested parties. Such award shall be rendered according to the facts disclosed by the evidence and according to the Rules and Regulations of the Association and the laws of the land.

188. APPEAL.—Any interested party dissatisfied with the award of the Committee of Arbitration may appeal therefrom to the Committee of Appeals. The appeal may be perfected by filing a written notice with the Secretary within five days after such party shall have received from the Secretary a copy of the award.

189. PROCEDURE ON APPEAL.—The Committee of Appeals, after taking oath, shall review the case upon the record of the testimony given before the Committee of Arbitration. No additional testimony shall be given before the Committee of Appeals; provided, however, that if it shall be made to appear by affidavits that the appealing party has additional evidence which, in the exercise of due diligence, he was unable to present to the Committee of Arbitration, the Committee of Appeals may direct a new hearing before the Com-

mittee of Arbitration to enable such additional evidence to be presented.

190. AWARD OF COMMITTEE OF APPEALS.—The award of the Committee of Appeals may affirm, reverse, or modify the award of the Committee of Arbitration. The award of the Committee of Appeals shall be made and filed in like manner as that of the Committee of Arbitration, and copies thereof shall be delivered by the Secretary to all interested parties.

191. AWARDS, HOW SIGNED AND RECORDED.—All awards shall be signed by the Chairman of the Committee making the same and shall be recorded by the Secretary in a book kept for that purpose, which book may be inspected at any time by any member of the Association.

192. EFFECT OF AWARD.—The award of the Committee of Appeals, or, if no appeal is taken, the award of the Committee of Arbitration, shall be final and conclusive upon all interested parties.

193. ENFORCEMENT OF AWARD.—If either party fails to comply with the award, the other party, within one year thereafter, may file such award, together with the instrument of submission, in the Circuit Court of Cook County, Illinois, to be enforced therein according to the Illinois Statutes governing arbitrations and awards.

194. JURISDICTION OF COMMITTEES NOT OPEN TO QUESTION.—Any member who submits a controversy to either of such Committees, or who appears and prosecutes or defends a case before either of such Committees, or who takes any steps therein, shall be conclusively presumed to have voluntarily recognized the jurisdiction of such Committee to hear and determine such controversy, and shall not thereafter allege the contrary.

195. SPECIAL COMMITTEE OF ARBITRATION.—If the parties to a controversy desire, they may agree upon a Special Committee of Arbitration, in which event such Special Committee

shall proceed in like manner and with the same powers as the regular Committee. The parties may also stipulate, if they desire, that no appeal shall lie from such Special Committee to the Committee of Appeals. If no such stipulation is entered into, an appeal may be taken as in ordinary cases.

196. FEES FOR ARBITRATION.—Fees for arbitration shall be as follows: Where the amount in controversy is less than $500, the fees shall be $20. Where the amount in controversy is from $500 to $1,000, the fees shall be $30. Where the amount in controversy is from $1,000 to $1,500, the fees shall be $40. Where the amount in controversy is in excess of $1,500, the fees shall be $50. All such fees shall be divided equally among the sitting members of the Committee of Arbitration. Similar fees shall be paid on appeal to the Committee of Appeals, to be divided in the same manner. The fees payable to the Committee of Arbitration shall be paid to the Secretary in advance by the party bringing the case. The fees payable on appeal shall be paid to the Secretary in advance by the party taking the appeal. All such fees, however, shall ultimately be paid as directed by the final award.

CHAPTER 7.

AGENCY AND MARGIN ACCOUNTS.

‡200. FLOOR BROKERS.—A member, who executes orders for another member and who is not a member of the Clearing House, must immediately give up the name of a clearing member. A floor broker trading for a member shall be liable as principal for the performance of the contract except that in the case of commodities his liability shall terminate when the transaction is accepted by the principal.

201. MINIMUM RATES.—Members acting as brokers or commission merchants must charge at least the minimum rates of brokerage or commission prescribed by the Rules. A member receiving a salary must be paid brokerage in addition to his salary.

*202. EXECUTION OF ORDERS.—A member receiving orders is prohibited from buying or selling securities covered by such orders on or for his own account, except, that a member may, after openly offering or bidding for securities, as provided hereafter, buy or sell such securities for his own account by sending for the principal or his agent and making the transaction with him, in which case no brokerage may be charged. When a member has an order to buy and an order to sell the same security he must offer such security at the unit of price higher than his bid before making a transaction with himself, if not already bid or offered, in which case he shall add to his name on his report, the words "on order."

†202.—A. ORDERS MUST BE EXECUTED IN THE PUBLIC MARKET.—All orders received by any member of this Association, firm or corporation, doing business on Change, to buy or sell for future delivery any of the commodities dealt in upon the Floor of the Exchange (except when in exchange

*Amended May 10, 1934.
†Adopted May 10, 1934; see Regulation 1866.
‡See "Rulings."

for cash property) must be executed in the open market in the Exchange Hall during the hours of regular trading and under no circumstances shall any member, firm or corporation assume to have executed any of such orders or any portion thereof by acting as agent for both buyer and seller either directly or indirectly, in their own name or that of an employee, broker or other member of the Association; provided, that on transactions where brokers as agents for other members meet in the execution of orders in the open market and without prearrangement unintentionally consummate a contract for the one and same clearing member principal, such transactions shall not be considered in violation of this Rule.

203. CORPORATIONS AS CUSTOMERS.—A member receiving orders from a non-member corporation must be furnished with a certified copy of a resolution of the Board of Directors of such corporation authorizing the person giving the order as the designated representative of such corporation to place such orders for its account, and naming some other representative of such corporation to receive confirmations of all trades made for its account. Confirmations of all such trades shall be made in accordance with such resolution. In opening new accounts, a reasonable time shall be allowed to secure a copy of the authorizing resolution. If a corporation files with the Secretary a general authorization as above provided, such authorization shall be deemed to have been filed with all members. The provisions of this Rule shall not apply to corporations organized outside of the United States.

*204. TRADES OF NON-CLEARING MEMBERS.—A non-clearing member must clear his trades through a clearing member who, in such case, acts as commission merchant.

A clearing member may authorize a non-clearing member to make trades on Change for the account of the clearing

*Amended June 29, 1933.

member. Such authorization shall be written and filed with the Secretary. Thereafter, the clearing member shall be liable upon all trades made by the non-clearing member until such authorization has been revoked in writing and such revocation shall have been posted by the Secretary upon the bulletin board of the Exchange.

205. TRADING FOR EMPLOYEES.—No member shall accept orders or clear trades for a non-member who is employed by another member nor shall another member accept orders or clear trades for a member who is employed by another member when the name of the employer appears in the transaction.

206. EMPLOYEES OF MEMBERS, BANKS, OR TRUST COMPANIES.—No member shall accept marginal accounts of a non-member employee of the Association or of the Clearing House or of another member or for any officer or employee of a bank or trust company other than President or a Vice-President, unless the written consent of the employer be first obtained.

*207. CONFIRMATION TO CUSTOMERS.—A commission merchant who makes a trade for a member or non-member customer shall confirm the trade to the customer upon the same day. Such confirmation shall be in writing and shall show the commodity or security bought or sold, the amount, the price, and the name of the other party to the contract, and, in the case of a commodity, the delivery month. A non-resident member may give to his customer the name of his resident commission merchant in lieu of the name of the other party to the contract, subject to the right of the customer to receive the name of the other party to the contract upon request.

Where a trade is made by a branch office of a resident member, such branch office being outside of Illinois, the branch office may confirm the trade to the customer without giving the name of the other party to the contract, provided

*See Regulation 1845.

the confirmation has prominently printed or stamped thereon the words, "Name of other party to contract furnished on request."

208. SOLICITORS, CASH GRAIN BROKERS, AND CUSTOMERS' MEN.—The Board by Regulation may establish the conditions applicable to the employment of solicitors, cash grain brokers, and customers' men.

209. DEPOSITS BY CUSTOMERS.—A member acting as commission merchant for a customer (member or non-member) may require from such customer a deposit, as indemnity against liability, and subsequent deposits to the extent of any adverse fluctuations in the market price. Such deposits must be made with the commission merchant within a reasonable time after demand, and, in the absence of unusual circumstances, one hour shall be deemed a reasonable time. The failure of the customer to make such deposit within such time, shall entitle, but shall not obligate, the commission merchant to close out the trades of the defaulting customer. If the commission merchant is unable to effect personal contact with the customer, a written demand left at the office of the customer, during business hours, shall be deemed sufficient.

*210. MARGINS.—No member may accept or carry an account for a customer, whether a member or non-member, without proper and adequate margin. The Board, by regulation, shall fix minimum margin requirements.

The provisions of the foregoing paragraph do not apply to a non-clearing member who makes his own trades or who on the floor gives his orders to a broker and pays the brokerage and such trades are exclusively for the personal account of the non-clearing member, provided, however, that

†A non-clearing member who is indebted to one or more clearing members, and such indebtedness arises out of transactions executed after March 1, 1943 shall not execute or cause

*Amended October 14, 1935; September 26, 1938; February 24, 1941; December 29, 1942 (effective March 1, 1943). See Regulation 1822 and 1822-A.

†See Regulation 1787.

to have executed any trade for his personal account unless permission is given in writing by a clearing member or members, provided that such written permission to trade with limitations is approved by the Business Conduct Committee. The non-clearing member in such case must trade for his own account only through the clearing member, or members, issuing permission to trade, provided, however, that the non-clearing member may liquidate open positions existing prior to the enactment of this rule through the clearing member or members, carrying such accounts.

*211. CUSTOMERS' SECURITIES.—The improper use of a customer's securities is inconsistent with just and equitable principles of trade.

*212. AGREEMENT FOR USE OF SECURITIES.—An agreement between a member and a customer, authorizing the member to pledge securities, either alone or with other securities carried for the account of the customer, either for the amount due thereon or for a greater amount, or to lend such securities, does not justify the member in pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said member.

No form of general agreement between a member and a customer shall warrant the member in using securities carried for the customer for delivery on sales made by the member for his own account, or for any account in which the firm or corporation of said member or of any general or special partner therein is directly or indirectly interested.

216. PARTIAL PAYMENT.—An arrangement by a member for the purchase of securities for account of a customer, to be paid for by the customer on installments or by a series of partial payments, under which the charge for purchasing and carrying any such securities is unreasonable, is an act detrimental to the interest or welfare of the Association.

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*See Regulation 1825.

CHAPTER 8.

Brokerage and Commissions.

220. Minimum Rates.—The rates of brokerage and commission fixed by this Chapter are just and reasonable and are established as the minimum rates chargeable for the services specified.

*221. Members' Rates.—Where a member acts as commission merchant for another member, the minimum rates of commission shall be as follows:

(a) With respect to any of the transactions mentioned in Rule 231, except those for which members' rates are specified, one-half of the non-members' commission.

(b) With respect to the transactions mentioned in Rule 232, three-fourths of the non-members' commission, except as to provisions where the rate shall be one-half of the non-members' commission.

(c) With respect to any of the transactions mentioned in Rule 236, one-half of the non-members' commission.

The brokerage in such cases, if any, shall be paid by the member acting as commission merchant.

(d) With respect to any of the transactions mentioned in Rule 236, one-quarter of the non-members' commission, when the member makes his own trades or on the floor gives his orders to a broker and pays the brokerage and such trades are exclusively for the personal account of the member and are not closed the same day.

†(e) When a member acts as commission merchant for a non-clearing member, and the non-clearing member makes his own trades or on the floor gives his orders to a broker and pays the brokerage, and such trades are exclusively for the personal account of the non-clearing member and are closed within thirty days, the minimum commission rate shall be 25 cents per 1,000 bushels of

*Amended May 1, 1931; amended February 26, 1936; September 21, 1939. See "Rulings" and Regulation 1869.

†Amended December 14, 1938. See Regulation 1833 and "Rulings."

grain; 5 cents per 1,000 pounds of dry salted meats, or lard or cottonseed oil and 75 cents per 50 bales of cotton; provided, however, that if the clearing member in addition renders financing and accounting facilities for commodities received and/or tendered on contracts by delivery, these commissions shall not apply, but in such cases the rates shall be those stated in Section (f).

(f) When the transactions mentioned in Section (e) of this Rule are not closed within thirty days, the minimum commission rate shall be one-half the non-members' commission, and brokerage in such cases, if any, shall be paid by the member acting as commission merchant.

Members engaged in business in Chicago who sell cash grain for non-resident members are not brokers, but commission merchants, and must charge members' rates of commission.

*222. NON-MEMBERS' ACCOUNTS.—A non-clearing member may turn over to a clearing member security and future delivery orders of a non-member (free from expense to the clearing member) and receive half of the commissions paid by the non-member for the execution of such orders. The brokerage shall be paid by the clearing member. When instructed, the clearing member may render accounts directly to the non-member and, in this case, one-half the regular brokerage charges shall be paid by the non-clearing member. A non-clearing member may not share in the commissions paid by a non-member firm or corporation in which he has an interest, if such firm or corporation carries margin accounts for customers.

Where delivery is taken on future delivery purchases and the grain loaded and shipped, the member turning over the order shall receive the same compensation as on a completed contract for future delivery.

†223. WIRE CHARGES ON GIVE-UPS.—Where a member gives an order to a second member to be transmitted to a third member, the member placing such order, if the order is executed, shall pay to the second or transmitting member a mini-

*See Regulation 1819 and "Rulings." Amended November 22, 1937.
†Amended May 27, 1932; December 9, 1936; December 14, 1938; and February 24, 1941. See "Rulings" and Regulation 1867.

mum service fee of 25 cents per 1,000 bushels of grain; $2 per lots of 50,000 pounds of lard; $1.20 per lots of 30,000 pounds of ribs or clear bellies; 62½ cents per 50 bales of cotton; and $2.40 per tank car of cottonseed oil; provided that if such order is received by the transmitting member free from expense and is transmitted over a wire furnished by the third member the above charges may be waived by the transmitting member if he so elects. Wire service charges on securities shall be as mutually agreed upon.

Where a non-member gives an order to a member to be transmitted to another member the clearing member, if the order is executed, shall pay to the transmitting member a minimum service fee of 50 cents per 1,000 bushels of grain; $4 per lots of 50,000 pounds of lard; $2.40 per lots of 30,000 pounds of ribs or clear bellies; 62½ cents per 50 bales of cotton and $4.80 per tank car of cottonseed oil, but wire service charges may be absorbed in the commission paid by the non-member.

*224. Clearing Rates for Securities.—Where a clearing member acts as commission merchant for a non-clearing member, and the non-clearing member makes his own trades or on the floor gives his orders to a broker and pays the brokerage and such trades are exclusively for the personal account of the non-clearing member, and are closed the same day, the minimum clearing rates shall be 2½ cents per share of stock; and 50 cents per $1,000 bond, for the round turn.

†225. Brokerage.—A member who acts as floor broker for another member must collect and retain the entire brokerage and may not divide the same with any other person, provided, however, that when his membership is registered for the use of a corporation or partnership all brokerage earned by him must be paid into the corporation or partnership for which he is registered.

226. Corporations and Partnerships.—A corporation or partnership may be entitled to members' rates by virtue of a membership owned by one of its officers or general part-

*Amended May 1, 1931; amended February 26, 1936.
†See "Rulings."

ners except where limited by Regulations 1061 or 1079. A member who desires to designate a corporation or partnership for that purpose shall make application to the Board giving therein such information as may be requested. If the application is granted, such corporation or partnership, as well as such member, shall be entitled to members' rates. Such designation may be terminated at any time by the member, or by the Board. A corporation or partnership entitled to members' rates shall be subject to all requirements and prohibitions contained in the Rules or Regulations applicable to members, and in such cases the member shall be subject to discipline and the membership subject to sale by the Board for the acts or delinquencies of the corporation or partnership.

227. BUSINESS AT NOMINAL OR NO COMMISSION. —No member shall, without commission or for a nominal commission, transact or offer to transact for any customer, who is dealing in securities dealt in on the Exchange, any business in cotton, grain, produce or other commodities.

228. RECIPROCAL BUSINESS.—No member shall agree to give reciprocal business in cotton, grain, produce, or other commodities, dependent upon the amount of business received by him in securities dealt in on the Exchange.

†228-A. TELEGRAPHIC COMMUNICATION. — Free telegraphic and telephonic communication is permitted.

COMMODITIES.

*229. BROKERAGE BY GRADE.—The rates of brokerage for the purchase or sale of commodities by grade are as follows:

(a) For the purchase, or for the sale, by grade alone, of wheat, corn, soy beans, or oats, to be delivered in store in regular houses, either for immediate or for future delivery, fifteen cents per 1,000 bushels in lots of 5,000 bushels or multiples thereof, and twenty-five cents per 1,000 bushels for delivery in lots of less than 5,000 bushels.

(b) For the purchase, or for the sale, by grade alone, of rye, barley, or flaxseed, to be delivered in store in

*Amended October 2, 1936. See "Rulings."
†See "Rulings."

regular houses, either for immediate or for future delivery, twenty-five cents per 1,000 bushels.

(c) For the purchase, or for the sale, of all kinds of grain in store in Chicago, when special location or character of property is stipulated, fifty cents per 1,000 bushels.

(d) For the purchase, or for the sale, of contract D. S. short ribs, D. S. extra short clears, D. S. clear bellies. or lard, for future delivery, two and one-half cents per 1,000 pounds; on transactions made in the open market for immediate delivery, one-eighth of one per cent.

(e) For the purchase or for the sale of cotton for future delivery, seventy-five cents for each 50 bales.

**(f) For the purchase or for the sale of contract cottonseed oil for future delivery $1.25 per tank car.

*(g) For the purchase, or for the sale, by grade alone either for immediate or for future delivery, or to arrive, or in carload lots, in any position:

On wheat or barley	per car	$2.00
On corn, rye, oats or soy beans	" "	1.50
On hay or straw	" "	3.00
On ear corn	" "	2.00
On screenings, bran, middlings, and all kinds of ground feed	" "	2.00
On flaxseed	" "	2.50
On clover, timothy, millet, Hungarian, mustard, or buckwheat seeds	" "	3.00
On cottonseed oil	" "	1.25
On seeds in less than carload lots (provided total charge is not more than $3.00)	" bag	.03

†230. Brokerage by Sample.—The rates of brokerage for the purchase or sale of commodities by sample and C. I. F. are as follows:

††(a) For the purchase, or for the sale, by sample or by grade and sample combined, for immediate or for future delivery, or to arrive, or in carload lots, in any position:

On wheat or barley	per car	$2.00
On corn, rye, oats or soy beans	" "	1.50
On ear corn	" "	2.00
On hay or straw	per car	$3.00

*Amended July 20, 1936 and December 14, 1938.
†Amended March 14, 1935. See "Rulings."
††Amended July 20, 1936.
**Adopted December 14, 1938.

On screenings, bran, middlings, and all kinds of ground feed	per car	$2.00
On flaxseed	" "	2.50
On clover, millet, Hungarian, timothy, mustard, or buckwheat seeds	" "	3.00
On seeds in less than carload lots (provided total charge is not more than $3.00)	" bag	.03

(b) For the purchase, or for the sale, of all kinds of grain C. I. F. for shipment by water or rail, to or from Chicago or other points, one-eighth of one cent per bushel in lots of 5,000 bushels or more, and one-quarter of one cent per bushel in lots of less than 5,000 bushels.

*231. COMMISSIONS—FUTURES TRADING.—The rates of commission chargeable to non-members for the purchase or sale of commodities for future delivery and for the purchase or sale of warehouse receipts covering grain in store in Chicago are as follows:

(a) For the purchase, or for the sale, or for the purchase and sale, by grade alone, of grain to be delivered in store in satisfaction of contracts for future delivery,

	Non-members	Members	
in lots of 5,000 bushels and multiples thereof..	$15.00	$7.50	per 5,000 bu.
in lots of 1,000 bushels and multiples thereof			
(1) within the City of Chicago	3.00	1.75	per 1,000 bu.
(2) when orders are received from, or confirmations of either purchase or sale are sent to points outside the city of Chicago..	4.00	2.25	per 1,000 bu.
†(a-1) For the purchase or sale of warehouse receipts covering grain in store in Chicago ..... (Minimum charge, $1.00)	⅜c	¼c	per bushel

(b) Foreign rates (exclusive of Canada) for the above transactions shall be three-eighths of a cent per bushel to non-members and one-quarter of a cent per bushel to members.

*Amended October 2, 1936; September 21, 1939; Oct. 6, 1941. See Regulations 1809, 1809-A, 1809-B, 1868 and 1869 and "Rulings."
†See "Rulings"

(c) For the purchase, or for the sale, or for the purchase and sale, of lard, forty cents per 1,000 pounds.

(d) For the purchase, or for the sale, or for the purchase and sale, of D. S. short ribs, D. S. extra short clears, or D. S. clear bellies, forty cents per 1,000 pounds.

(d-1) Foreign rates (exclusive of Canada) on transactions enumerated in Sections (c) and (d) shall be fifty cents per 1,000 pounds to non-members and twenty-five cents per 1,000 pounds to members.

(e) For the purchase, or for the sale, of cotton for future delivery, $6.25 for each 50 bales, when the price of such transaction does not exceed 25 cents per pound, and when the price of such transaction exceeds 25 cents per pound, an additional $1.25 for each five cents or portion of five cents of such excess in price. For any person residing outside the United States or Canada, whether or not a member of the Association, there shall be an additional charge of $2.50 per hundred bales or fractional part thereof. When the cost of reporting executions is in excess of the $2.50 additional commission required on foreign business, such extra cost shall be charged in addition to the prescribed commission.

‡(f) For the purchase or for the sale or for the purchase and sale of cottonseed oil for future delivery, $25.00 per contract of 60,000 pounds.

*232. Commissions—Commodities.—The rates of commission chargeable to non-members for the purchase or sale of cash commodities are as follows:

†(a) For receiving and selling, or for buying either to be loaded or to be unloaded or to be forwarded, by grade or sample, or both, either for immediate or for future delivery, or to arrive, or in carload lots in any position:

Wheat, rye, barley, corn, oats, ear corn, kaffir corn, milo maize, feterita, spelt and soy beans ..... 1 per cent**

Excepting that when one per cent amounts to less than 1½c per bushel on kaffir corn, milo maize, feterita, spelt and ear corn, 1c per bushel on wheat, shelled corn, rye, barley and soy beans, and ¾c per bushel on oats, then 1½c

*Amended March 14, 1935. See "Rulings" and Regulations 1868 and 1869.

†Amended July 20, 1936 and August 24, 1938.

‡Adopted December 14, 1938.

**See Rules 232-B, C and D.

per bushel shall be the minimum on ear corn, kaffir corn, milo maize, feterita and spelt, 1c per bushel on wheat, shelled corn, rye, barley and soy beans, and ¾c per bushel on oats.

On bran, middlings, screenings, ground feed and all millstuffs (of 20 tons or less)	$ 7.50	per car
On bran, middlings, screenings, ground feed and all millstuffs (of more than 20 tons)	.37½	per ton
On hay (of 10 tons or less)	10.00	per car
On hay (of more than 10 tons)	1.00	per ton
On straw (of 10 tons or less)	7.50	per car
On straw (of more than 10 tons)	.75	per ton
On broom corn	¼c	per pound
On flaxseed or cloverseed	1	per cent
On flaxseed or cloverseed, in less than carload lots	1½	per cent
On timothy, Hungarian, millet, mustard, or buckwheat, carloads or less	1½	per cent

†Except that purchases for shipment from Chicago of the commodities enumerated in this clause shall not be subject to the percentage charge and may be made for account of a member or a non-member at a minimum charge, for wheat, barley, ear corn, kaffir corn, milo maize, feterita, and spelt of 1c per bushel

On corn, rye or soy beans	¾c	per bushel
On oats	½c	per bushel

(b) For the purchase or for the sale of all kinds of grain contained in canal boats, by grade, by sample, or by grade and sample combined, ½ cent per bushel.

*(c) For the purchase and sale by grade or by sample or grade and sample combined, of the following property to arrive:

Wheat, rye, barley, corn, oats, ear corn, kaffir corn, milo maize, feterita, spelt and soy beans 1 per cent

Excepting that when 1 per cent amounts to less than 1½c per bushel on kaffir corn, milo maize, spelt and ear corn, 1c per bushel on wheat, shelled corn, rye,

*Amended July 20, 1936 and August 24, 1938.
†See Regulation 1836.

barley and soy beans, and ¾c per bushel on oats, then 1½c per bushel shall be the minimum charge on ear corn, kaffir corn, milo maize, feterita and spelt, 1c per bushel on wheat, shelled corn, rye, barley and soy beans and ¾c per bushel on oats.

On carload lots of flaxseed or cloverseed 1 per cent

On buckwheat, timothy, millet, Hungarian or mustard seeds, either carloads or less 1½ per cent

(d) CASH PROVISIONS.—For receiving and selling, or for buying and shipping pork, lard, green, cured, or partly cured meats ½ of 1 per cent

**(e) Cash Cottonseed Oil.—For receiving and selling, or for buying and shipping, loose cottonseed oil in tank cars, $20.00 per tank car.

‡232-B. SPECIAL EMERGENCY COMMISSION ON CORN.—The rate of commission chargeable to non-members for receiving and selling or for buying and shipping corn shall be 1¢ per bushel during the existence of the Office of Price Administration's Maximum Price Regulation (Corn).

††232-C. SPECIAL EMERGENCY COMMISSION ON SOYBEANS.—The rate of commission chargeable to non-members for receiving and selling or for buying and shipping soybeans shall be 1¢ per bushel.

†††232-D. SPECIAL EMERGENCY COMMISSION ON WHEAT.—The rate of commission chargeable to non-members for receiving and selling or for buying and shipping wheat shall be 1½¢ per bushel during the existence of the Office of Price Administration's Revised Maximum Price Regulation 487 (Wheat).

†233. GRAIN IN VESSELS.—The rates of commission chargeable to members or non-members for receiving and selling, or for buying and shipping commodities in vessel lots, are

†Amended March 14, 1935—July 20, 1936. See Regulation 1836.
**Adopted December 14, 1938.
‡Adopted April 2, 1943; rescinded March 14, 1945.
††Adopted September 3, 1943.
†††Adopted January 24, 1944.

as follows: On wheat, barley, and flaxseed, ½c per bushel; on corn, rye, oats and soybeans, ¼c per bushel.

*233-A. VESSEL BROKERAGE.—The rates of commission chargeable to members or non-members for chartering vessel space are as follows:

(a) Unload Rates

1. On grain shipped from Chicago or South Chicago, Illinois, to ports west of and including Kingston, Ontario, for shipment between the opening of navigation and November 30, inclusive, one-eighth of a cent per bushel.

2. On grain shipped from Chicago or South Chicago, Illinois, to ports beyond Kingston, Ontario, for shipment between the opening of navigation and November 30 inclusive, one-quarter of a cent per bushel.

3. On grain shipped from Chicago or South Chicago, Illinois, to any other port for December loading, one-quarter of a cent per bushel.

4. On grain loaded at Chicago or South Chicago, Illinois, in April and shipped at the opening of navigation, one-eighth of a cent per bushel if shipped to ports west of and including Kingston, Ontario, and one-quarter of a cent per bushel if shipped to ports beyond Kingston, Ontario.

(b) Storage Rates

1. On grain shipped prior to December 1st from Chicago or South Chicago, Illinois, to be stored in ports west of and including Kingston, Ontario, one-quarter of a cent per bushel.

2. On grain shipped from Chicago or South Chicago, Illinois, during the month of December to be stored in ports west of and including Kingston, Ontario, three-eighths of a cent per bushel.

3. On grain shipped from Chicago or South Chicago, Illinois, to be stored in ports beyond Kingston, Ontario, three-eighths of a cent per bushel.

4. On grain loaded on vessels for storage, to be held at Chicago or South Chicago, Illinois, one-quarter of a cent per bushel.

The above rates of commission may not be absorbed in the freight rate paid to the vessel owner, and no member shall

*Adopted October 11, 1933. See "Rulings."

load or ship grain, any part or portion of which is purchased on the Chicago Board of Trade or shipped from a public regular or custodian warehouse located in the Chicago District in vessel tonnage which is not owned by such member, unless it is chartered or loaded through a member vessel broker or agent, except when the broker or agent members are unable to produce vessel capacity on firm bids from a shipper at as low a freight rate as is offered by non-members.

Whenever a member shall load or ship grain from the Chicago District in vessel tonnage chartered through non-member vessel owners, brokers or agents, said transaction is to be reported to the Transportation Department with such particulars as may be required by said Transportation Department.

*234. ADDITIONAL CHARGES.—In addition to the rates of commission herein prescribed, there shall be charged all legitimate expenses incurred in handling and caring for the property involved, including storage, insurance, inspection, and weighing. Cost of sampling need not be included. Handling charges for cotton are as follows:

(a) For financing, handling, and preparing cotton for delivery on contracts, 75 cents per bale.

(b) For handling and preparing cotton for delivery on contract when no financing is done, 50 cents per bale.

(c) For taking up cotton on contract, financing and shipping, 75 cents per bale.

(d) For taking up cotton on contract and shipping when no financing is done, 50 cents per bale.

(e) For taking up cotton on contract and redelivering during the same month or during a later month when financing is done, 50 cents per bale.

(f) No charge shall be made for taking up cotton on contract when paid for by the principal upon delivery of press or warehouse receipts, nor for delivering cotton on contract when press or warehouse receipts are furnished by the principal and no advance is made.

(g) The minimum charges, as stated in this rule, refer to certificated cotton only, and shall be absolutely net. No part of the cost of inspecting and certificating shall be absorbed by or in such charges.

*See "Rulings."

SECURITIES.

*236. COMMISSIONS ON SECURITIES TO NON-MEMBERS.—Commissions shall be charged and collected on the execution of all orders for purchase or sale of securities admitted to dealings upon the Exchange and these commissions shall be at rates not less than the rates hereinafter prescribed, and shall be net and free from any rebate, return, discount, or allowance made in any shape or manner, or by any method or arrangement direct or indirect. No bonus or percentage or portion of a commission, whether such commission be at or above the rates herein established, or any portion of a profit except as may be specifically permitted by Regulation adopted by the Board, shall be given, paid, or allowed, directly or indirectly, or as a salary or portion of a salary, to a clerk or person for business sought or procured for any member of the Association or firm, or corporation, registered thereon.

Commissions shall be as follows:

(a) On business for parties not members of the Association, including joint account transactions in which a non-member is interested, and on transactions for partners not members of the Association;

ON STOCKS—(Except as to Inactive Stocks, as stated below):

PRICE	RATE PER SHARE
Selling under 50 cents	As mutually agreed
Selling at 50 cents and above, but under $1	Not less than 3 cents
Selling at $1 and above, but under $10 (Except on stocks designated by the Committee on Stock List)	Not less than 7½ cents
Selling at $10 and above, but under $25	Not less than 12½ cents
Selling at $25 and above, but under $50	Not less than 15 cents

*Amended October 17, 1933.

Selling at $50 and above, but under $75	Not less than 17½ cents
Selling at $75 and above, but under $100	Not less than 20 cents
Selling at $100 and above, but under $200	Not less than 25 cents
Selling at $200 and above, but under $250	Not less than 30 cents
For each additional $50 in price	5 cents additional

provided, however, that on every transaction which involves an amount of $15 or more, the minimum commission shall be not less than $1.00.

On Inactive Stocks.—(As designated by the Board):

Price	Rate Per Share
Selling at less than $100	Not less than 20 cents
Selling at $100 and above	The same rates as provided for other stocks

On Bonds:

Not less than $2.00 per $1,000 par value.

On Subscription Rights:

Price	Rate Per Right
Selling under 50 cents	As mutually agreed
Selling at 50 cents and above, but under $1	Not less than 3 cents
Selling at $1 and above, but under $5	Not less than 5 cents
Selling at $5 and above, but under $10	Not less than 7½ cents
Selling at $10 and above	Not less than 15 cents

(b) On obligations of the United States, Porto Rico, Philippine Islands, and States, Territories, and Municipalities therein; Bonds or Notes having five years or less to run; Securities which, pursuant to call or other-

wise, are to be redeemed within twelve months. Such rates to members or non-members as may be mutually agreed upon; provided, however, that the Market Report Committee may determine special rates on any or all of the above mentioned securities, reporting the same to the Board.

If a member of the Association, or firm or corporation registered thereon, engages in transactions in which the member, firm, or corporation is acting as a dealer in securities of original issue, the rate of commission prescribed in this Chapter shall not apply to such transactions if not made on the Exchange; provided, however, that such transactions shall be subject to such regulations as the Market Report Committee may from time to time prescribe.

237. COMMISSIONS ON ORDERS FROM NON-MEMBERS. — In transactions where orders are received from a non-member, and the broker filling the order is directed to give up another broker or clearing firm, the responsibility for collecting the full commission specified in this Chapter shall rest with the broker or clearing firm settling the transaction.

238. COMMISSIONS ON MEMBERS' ORDERS.—In transactions where orders are received from a member, and a clearing firm is given up by said member or by his order, the responsibility of collecting the full commission specified in this Chapter shall rest with said clearing firm; and it shall be the duty of the broker who executes such orders to report the transactions to the clearing firm and render his bill to them therefor at the rates specified.

239. TRANSACTIONS OUTSIDE OF UNITED STATES.—When a non-member shall cause to be executed in a market not in the United States or Canada an order for the purchase or sale of securities listed on this Exchange, and said purchase or sale shall be accepted by a member of this Exchange, firm, or corporation registered thereon, for the account of said non-

member, the commission specified in this Chapter shall be charged the non-member in addition to any commission charged by the party or parties making the transaction.

240. DELIVERIES ON PRIVILEGES.—When securities are received or delivered for a non-member on a privilege, the commission specified in this Chapter must be charged.

*241. BROKERAGE ON SECURITIES.—

(a) For the purchase or for the sale of stock, warrants or subscription rights, two cents per share, except on stocks, warrants or subscription rights selling under $1.00, when the brokerage shall be ¾ of a cent per share.

(b) For the purchase or for the sale of bonds, forty cents per $1,000 of principal amount.

*Amended November 22, 1937.

CHAPTER 9.

EMERGENCIES, HOURS FOR TRADING, AND CONTRACTS.

251. EMERGENCIES.—The Board shall have power to declare any day to be a holiday or to close the Exchange or to stop trading in any security or in any of the future contracts of any commodity, by reason of any emergency or otherwise, and to make such Regulations in regard to deliveries and settlement prices as it may deem proper because thereof. All Exchange contracts shall be subject to the exercise of such power. Such contracts shall also be subject to the exercise by the Clearing House of the powers reserved to the Clearing House by its Charter, By-Laws, and Resolutions.

***252. HOURS FOR TRADING.—Hours of trading for future delivery in commodities other than cotton and cottonseed oil shall be from 9:30 A. M. to 1:15 P. M., except on Saturdays when the hours shall be from 9:30 A. M. to 12 noon.**

Hours for trading for future delivery in cotton and cottonseed oil and for trading in securities shall be fixed by regulation adopted by the Board.

No such trading shall take place except in the Exchange Hall during regular hours.

The Association shall conform to Chicago time.

†253. PRICE BASIS.—Future delivery contracts on grain shall be in multiples of one-eight of a cent per bushel. Bids or offers shall not be made at a less variation than ¼ of one dollar in stocks, and ¼ of 1 per cent of the par value of bonds; provided, however, that the Floor Committee may from time to time, in its discretion, determine that transactions may be made at variations less than the above, fixed by said Com-

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***Amended August 13, 1936, November 24, 1936 and December 14, 1938. See "Rulings."**

†Amended June 29, 1933 and March 14, 1945.

mittee, on transactions in Foreign and Domestic Government bonds and notes, State, County, and Municipal securities, short time bonds and notes of corporations, or on rights and stocks selling at a price of one-eighth or less, which said variations shall thereafter be in effect and be reported to the Board.

254. BIDS AND OFFERS IN COMMODITIES SUBJECT TO FIRST ACCEPTANCE.—Any offer made on Change to buy or sell any commodity for future delivery is subject to immediate acceptance by any other member. All such offers shall be general offers and shall not be specified for acceptance by particular members.

255. BIDS AND OFFERS IN COMMODITIES SUBJECT TO PARTIAL ACCEPTANCE.—If an offer is made on Change to buy or sell any specified quantity of any commodity for future delivery, such offer shall be deemed an offer to buy or sell all or any part of such specified quantity, and, if not immediately accepted for the entire quantity, it may be accepted for a quantity less than specified. Offers to buy or sell a specified quantity or none shall not be allowed.

256. SUNDAYS OR HOLIDAYS.—When a contract in commodities matures on Sunday, or on a holiday, performance thereof shall be made on the preceding business day.

257. WHAT SECURITIES MAY BE DEALT IN.—Only such securities and securities on a "when issued" basis as shall be admitted to dealing by the Board on the recommendation of the Committee on Stock List shall be dealt in on the Exchange. The Board may suspend dealing therein or remove same from the List.

*258. TIME AND PLACE FOR TRADING.—Dealings upon the Exchange shall be limited to the hours during which the Exchange is open for the transaction of business, and no mem-

*See Regulation 1866.

ber shall make any transaction in securities with another member except at the post designated for the particular security in which the transaction is made and no member shall make any transaction for future delivery of a commodity except in the pit assigned to trading in such commodity, except as provided in Regulation 1809. No member shall make, in the rooms of the Association, a transaction with a nonmember, in any commodity or in any security admitted to dealing on the Exchange; but this Regulation shall not apply to transactions with an employee of the Association or of the Clearing House engaged in carrying out arrangements approved by the Board to facilitate the borrowing and lending of money.

*259. ADMISSION TO THE FLOOR.—No one but a member shall make any transaction, either directly or indirectly, or perform any work whatsoever pertaining to receiving, executing, and reporting of orders in securities or commodities traded in upon the floor of the Exchange. No one but a member shall be admitted to the floor of the Exchange, except as provided by Regulations adopted by the Board.

†259-a. TRADING DURING THE DELIVERY MONTH.—No trades in grain futures deliverable in the current month shall be made during the last three business days of that month.

[See Regulations 1832 and 1832-a.]

*Amended December 12, 1929.
†Adopted October 14, 1935. [See Regulations 1832 and 1832-a.]

*CHAPTER 9. (a)

Deposits for Security

260. Amount Callable.—On future delivery contracts, buyers may require sellers and sellers may require buyers to deposit, as security for faithful performance, such percentage of the market price of the commodities bought or sold as shall not be in excess of the standing margin requirements of the Clearing House.

261. Depositaries.—All such deposits shall be made with the Treasurer, or with a bank approved by the Board. Such bank must have at least one executive officer who is a member, and must file a bond, approved by the Board, conditioned to dispose of such deposits according to the rules.

262. Certificates.—The depositary shall issue a certificate of deposit in duplicate, giving the date and amount of the deposit and the name of the depositor and the beneficiary. It shall also state that the certificate is subject to the rules of the Association.

263. Disposition of Duplicate.—The depositor, within one hour after the call for the deposit, must deliver the duplicate certificate of deposit to the Clearing House or to the beneficiary.

264. All Contracts Secured.—Unless otherwise provided, all deposits shall constitute security for the performance of all existing or future exchange contracts between the parties.

265. Notice of Call.—Calls for deposits may be served personally upon the party called or upon his clerk or representative on Change, or by written notice left at his place of busi-

*Entire chapter adopted June 6, 1931.

ness. If he has no place of business and cannot be found, the call may be made by written notice left at the Office of the Secretary.

266. Failure to Make Deposit.—Failure to make deposits for one hour after demand shall authorize but not obligate the other party to close out the trades for which security was demanded. If such trades are closed, the delinquent shall be immediately notified, whereupon any loss upon such trades shall be immediately payable through the Clearing House.

267. Return of Deposits.—Upon performance or closing out of contracts secured by deposits, or upon the assumption of such contracts by the Clearing House, such deposits may be withdrawn upon the joint endorsement of depositor and beneficiary. If they cannot agree as to the disposition of the deposit, either party may apply to the President, who shall appoint a special committee of three members before whom the dispute shall be arbitrated. The Committee shall report their findings to the President, and thereupon the President shall endorse the original or duplicate certificate in accordance therewith. Such endorsement shall authorize the depositary to pay the deposit as directed.

268. Excessive Deposits.—If, by reason of market fluctuations, any deposit becomes excessive, the excess shall be released, either by the joint action of the interested parties, or by the President, as provided by Rule 267.

269. Deposits to Secure Clearing House.—The foregoing provisions of this chapter shall not apply as between clearing members and the Clearing House. Deposits to secure the Clearing House shall be pursuant to the by-laws of the Clearing House.

CHAPTER 10.

Deliveries of Commodities.

280. Scope of Chapter.—Commodities bought or sold for future delivery under exchange contracts shall be delivered in accordance with the provisions of this Chapter.

†281. Delivery by Warehouse Receipts.—Except as otherwise provided, deliveries shall be made by the delivery of registered warehouse receipts issued by warehouses which have been declared regular by the Board. The Board by regulation may prescribe the conditions upon which warehouses may be declared regular, and also conditions upon which warehouse receipts issued by regular warehouses shall be deliverable.

*282. Grain in Cars.—During the last three business days in the month regular deliveries of contract grades of grain on contracts for future delivery may be made in cars on track subject to the following:

(a) Cars must be within the Chicago District, in a railroad yard, where samples are taken by the Illinois State Grain Inspection Department.

(b) Cars must be consigned or ordered to a regular warehouse unless all regular storage space is filled or otherwise unobtainable.

(c) The grain must be inspected within such three-day period by the Illinois State Grain Inspection Department and approved for storage during the same period by the Grain Sampling Department of the Association.

(d) Deliveries in cars shall be made by the tender of delivery notices based on shippers' certificates of weight (if attached thereto), or railroad weights, or, in the absence of such weights, the marked capacity of the cars, and certificate showing approval by Grain Sampling Department for storage must be attached to delivery notice.

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†See Regulations 1829 and 1870.

*Amended October 6, 1930, effective October 14, 1930; amended January 7, 1931, effective August 1, 1931; amended September 26, 1934. Set aside by Board between March 31, 1942 and August 17, 1943. See "Rulings."

(e) In the event of any excess over the quantity contracted for, such excess shall be settled for at the current market value at the time such excess is made known to both parties and any deficit from such quantity contracted for shall be settled for at the Clearing House settlement price on the day of delivery.

(f) On all grain tendered under this Rule, the party making the original tender shall keep on file and deliver on request, tender's option, either the samples of the State Grain Inspection Department or the samples of the Board of Trade Sampling Department.

(g) Delivery of grain in cars shall be for quantities or parcels in the aggregate as sold, provided that on all contracts for 5,000 bushels, or 2,000 bushels, or 1,000 bushels or multiples thereof, deliveries shall be made in lots of 5,000 bushels, or 2,000 bushels, or 1,000 bushels, or multiples thereof, respectively.

(h) When consigned or ordered to a regular warehouse under paragraph (b), delivery shall not be complete unless the buyer elects otherwise until the grain is unloaded and warehouse receipts or weight certificates are issued therefor. In the meantime, title remains in the seller, the purchase price is not payable, and the seller remains liable for any change in grade. The buyer, however, if he make payment in advance, may order the cars unloaded at any other place where they will be weighed by the Weighing Department of the Association.

(i) When deliveries of grain are made under this Rule, and regular warehouse space is not available, the buyer shall have the right to order the grain to a destination other than a regular warehouse under the following conditions:

(1) The grain must be ordered to a destination in the Chicago District where it may be weighed by the Board of Trade Weighing Department.

(2) In case of failure of buyer to so order the grain, or, if the grain is ordered and not unloaded within seven business days from the date of final delivery, the buyer shall pay 80% of the value of the grain, based on shippers' weights or car capacity, subject to final adjustment after unloading, and assume responsibility for any change in grade.

284. Date of Delivery.—Unless the contract otherwise provides, where any commodity is sold for delivery in a specified month, delivery of such commodity may be made by the

seller upon such business day of the specified month as the seller may select. If not previously delivered, delivery must be made upon the last business day of the month.

†285. DELIVERY NOTICE.—Except on the final notice day of the month, a seller obligated to make delivery of commodities shall issue and deliver to the Clearing House a signed delivery notice which shall contain the name and business address of the issuer; it shall also describe the warehouse receipt to be delivered; the packer's brand in case of lard; and in the case of grain, tendered under the provisions of Rule 282, the information required in said rule. On the final notice day of the month, the delivery notice may contain only the written notice of the date of delivery and the quantity to be delivered. The delivery notice shall also state the delivery price on which delivery is to be made which shall be the price previously posted by the Clearing House for that purpose.

286. METHOD OF DELIVERY.—Delivery notices must be delivered to the Clearing House which shall pass the notices, in the order in which they are received, to the buyers obligated by the oldest contracts to take delivery of the same amounts of the same commodities. A buyer receiving such a notice from the Clearing House shall present the same at the office of the seller by whom it was issued, and delivery and payment shall follow.

‡287. TIME OF DELIVERY.—The exact hours for delivering and passing delivery notices, and for making delivery and payment, shall be fixed by the Board.

*288. PAYMENT.—Payment shall be made by certified check on a Chicago bank. The amount payable shall be determined by the delivery price named in the delivery notice. Adjustments with the Clearing House shall be made on the

†Amended October 14, 1935 and December 9, 1936.
‡See Regulation 1804.
*Amended May 19, 1930, approved by Illinois Commerce Commission June 4, 1930, effective January 2, 1931; amended January 7, 1931, effective August 1, 1931; amended August 11, 1938, approved by Illinois Commerce Commission September 29, 1938.

basis of the respective contract prices. No warehouse receipts covering grain in regular store shall be valid for delivery on future contracts unless the storage charges on such grain shall have been paid up to and including the 18th day of the preceding month, and such payment endorsed on the warehouse receipt. Furthermore, such receipt to be valid for delivery on future contracts must carry at least ten days' unpaid accumulated storage; provided, however, that the foregoing shall not apply to the delivery on future contracts of newly issued warehouse receipts which are dated later than the 18th day of the preceding month. Unpaid accumulated storage charges at the posted rate applicable to the warehouse where the grain is stored shall be allowed and credited to the buyer by the seller. Posted rates of storage may not be increased unless sixty days notice has been given to the public and in no case prior to the conclusion of the next following regular delivery mont For the purpose of this Rule the regular delivery months shall be considered to be March, May, July, September, October and December.

289. CONTRACTS NOT CLEARED.—Delivery upon a contract which has not been cleared shall be made pursuant to a delivery notice delivered by the seller directly to the buyer at the time specified for the delivery of a like notice to the Clearing House. Delivery and payment shall follow as above provided.

290. DUTIES OF MEMBERS.—Members shall not issue delivery notices unless they have in their possession or control the warehouse receipts described therein. Members issuing delivery notices describing certain warehouse receipts shall deliver such warehouse receipts pursuant to such notices as provided by the Rules and Regulations and shall make no other disposition thereof. A member who makes a false endorsement on a delivery notice or who alters the same in any manner shall be guilty of fraud.

*291. LOTS.—On future delivery contracts calling for the following amounts of the following commodities or multiples

*Amended May 27, 1932, January 30, 1941, June 25, 1942.

thereof, delivery shall be made in lots equal to the minimum quantity hereafter specified: 5,000 bushels of grain, 50,000 pounds of lard (contained in 136 tierces), and 30,000 pounds of meats. On future delivery contracts calling for odd lots of grain, delivery shall be made in lots of 1,000 bushels, with the exception of oats and barley, which shall be in 2,000 bushel lots or multiples thereof. Each lot of grain delivered must be described on the delivery notice, and may be made up of various amounts of grain of the various authorized grades situated in various warehouses, provided that no lot shall contain less than 1,000 bushels of any one grade in any one warehouse, except in the case of oats and barley where the minimum in any one warehouse shall be 2,000 bushels of any one grade. On the last business day of the month only, members having grain bought in odd lots and sold in 5,000 bushel lots may deliver odd lots on a 5,000 bushel lot contract by attaching the odd lot notices firmly together and endorsing the last notice.

†292. DIFFERENTIALS. — Unless otherwise specified, contracts for the sale of wheat, corn, soy beans, oats, rye, barley and malting barley shall be deemed to call for "contract" wheat, corn, soy beans, oats, rye, barley and malting barley respectively. Upon such contracts, sellers, at their option, may deliver all or part of the following grades at the following price differentials, provided that lots of grain of any one grade must conform to the minimum lot requirements of Rule 291:

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†Amended March 11, 1932, effective on all contracts for delivery on or after October 1, 1932, and, when designated as "new" contracts for delivery between July 1, 1932, and September 30, 1932, inclusive, to be effective on such "new" contracts immediately; amended June 20, 1934, (To be effective on contracts for future delivery of wheat, oats, rye, barley and malting barley made on and after July 2, 1934, and effective on contracts for future delivery of corn made on and after September 1, 1934); amended October 2, 1936 by adding "Soy Beans"; amended August 12, 1937, by adding No. 1 Yellow Soy Beans; amended March 7, 1941, February 20, 1942, June 25, 1942, October 5, 1943, November 18, 1943.

*WHEAT DIFFERENTIALS.

No. 1 Dark Hard Winter Wheat.....at 1¼ cents per bushel over contract price.

No. 1 Dark Northern Spring Wheat.
No. 1 Dark Northern Spring Wheat Heavy ..... } at 1 cent per bushel over contract price.

No. 2 Dark Hard Winter Wheat.....at ¼ cent per bushel over contract price.

No. 1 Hard Winter Wheat .....
No. 2 Hard Winter Wheat .....
No. 1 Yellow Hard Winter Wheat.....
No. 2 Yellow Hard Winter Wheat.....
No. 1 Red Winter Wheat.....
No. 2 Red Winter Wheat.....
No. 1 Northern Spring Wheat .....
No. 1 Northern Spring Wheat Heavy.. } at contract price.

†CORN DIFFERENTIALS.

No. 1 White Corn....
No. 2 White Corn....
No. 1 Yellow Corn....
No. 2 Yellow Corn.... } at ½ cent per bushel over contract price.

No. 1 (Mixed) Corn..
No. 2 (Mixed) Corn.. } at contract price.

No. 3 White Corn.....
No. 3 Yellow Corn.... } at 2 cents per bushel under contract price.

No. 3 (Mixed) Corn, at 2½ cents per bushel under contract price.

‡OATS DIFFERENTIALS.

No. 1 Extra Heavy Bright White Oats..
No. 1 Extra Heavy White Oats..... } at 1 cent over contract price.

No. 1 Heavy Bright White Oats.....
No. 1 Heavy White Oats ..... } at ¾ cent over contract price.

No. 1 Bright White Oats .....
No. 1 White Oats .....
No. 2 Extra Heavy Bright White Oats..
No. 2 Extra Heavy White Oats ..... } at ½ cent over contract price.

No. 2 Heavy Bright White Oats .....
No. 2 Heavy White Oats ..... } at ¼ cent over contract price.

No. 2 Bright White Oats .....
No. 2 White Oats ..... } at contract price.

*These differentials temporarily set aside by Regulation 1864-A.

No. 3 Extra Heavy Bright White Oats..
No. 3 Extra Heavy White Oats ..... } at 1 cent under contract price.

No. 3 Heavy Bright White Oats.....
No. 3 Heavy White Oats ..... } at 1¼ cents under contract price.

No. 3 Bright White Oats .....
No. 3 White Oats ..... } at 1½ cents under contract price.

Special red oats are deliverable at the premium or discount shown above for white oats of the same numerical grade.

Rye Differentials.

No. 1 Plump Rye .....At 5 Cents Over Contract Price
No. 2 Plump Rye .....At 2½ Cents Over Contract Price
No. 1 Rye .....At 1 Cent Over Contract Price
No. 2 Rye .....At Contract Price

†Barley Differentials.

(Effective October 6, 1943)

No. 1 Barley of Class I or III
No. 2 Barley of Class I or III } at contract price
No. 3 Barley of Class I or III — at 2c discount

No. 1 Malting Barley
No. 2 Malting Barley } at contract price

Provided, however, that no such barley tendered on contracts for future delivery shall have a dockage in excess of 2 per cent. Allowance shall be made by the seller to the buyer for dockage up to 2 per cent.

‡Barley Differentials.

(Effective November 19, 1943, on all contracts for delivery of barley on and after July 1, 1944.)

No. 1 Barley of Class I.....at contract price
No. 2 Barley of Class I.....at contract price
No. 3 Barley of Class I.....at 2 cents discount
No. 1 Malting Barley.....at contract price
No. 2 Malting Barley.....at contract price

provided, however, that no such barley tendered on contracts for future delivery shall have a dockage in excess of 2%. Allowance shall be made by the seller to the buyer for dockage up to 2%.

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†Amended October 5, 1943.
‡Amended November 18, 1943.

SOYBEAN DIFFERENTIALS

U. S. No. 1 Yellow Soybeans.....
U. S. No. 2 Yellow Soybeans..... } at contract price.
U. S. No. 3 Yellow Soybeans at 4 cents per bushel under contract price.

*293. VARIATION ALLOWED.—Deliveries of grain in store may vary not more than 1 per cent from the quantity contracted for, provided however, that no lot in any one warehouse shall contain less than 1,000 bushels of any one grade, except in the case of oats and barley where the minimum shall be 2,000 bushels.

294. INSURANCE.—Grain tendered for delivery must be insured against loss by fire by the Underwriters Grain Association of Chicago for at least 85 per cent of its value, to cover the buyer until noon of the business day following delivery. If the buyer is unable within that time to effect other insurance in that amount, the seller, upon request of the buyer, shall cancel any excessive insurance held by him, so as to enable the buyer to obtain insurance. The Secretary may require members at any time to furnish a list of their holdings and policies.

‡295. GRADES.—A contract for the sale of grain by grade shall be performed on the basis of the grades officially promulgated by the Secretary of Agriculture as conforming to United States Standards at the time of the making of the contract. If no such United States grades shall have been officially promulgated, then such contract shall be performed on the basis of the grades established by the rules of the Division of Grain Inspection of the Department of Agriculture of the State of Illinois, in force at the time of the making of the contract.

296. FAILURE TO ACCEPT DELIVERY.—Where a buyer who receives a delivery notice fails to present the same and to

*Amended December 9, 1936; June 25, 1942.
‡Amended December 9, 1936.

take delivery and make payment when payment is due, the issuer of the notice shall promptly sell the commodity on the open market for the account of the delinquent. He shall then immediately notify the Clearing House of the default, the contract price, and the resale price, and the Clearing House shall immediately serve a like notice upon the delinquent. Thereupon the delinquent shall be obligated to pay to the seller, through the Clearing House, the difference between the contract price and the resale price.

*297. SAFEGUARDING CONDITION OF GRAIN IN WAREHOUSES.—(a) The Board of Trade shall designate its Custodian Department as an agency for registration of public warehouse receipts, and only public warehouse receipts registered with such Custodian Department shall be within the provisions of paragraph (b) following.

(b) Whenever in the opinion of the operator of the warehouse any grain stored in a public warehouse under his jurisdiction should be loaded out in order to protect the best interests of the parties concerned, such operator shall notify the Custodian Department, giving the location and grades of such grain. The Custodian shall immediately notify the Chief Sampler of the Board of Trade, who shall at once proceed to the warehouse in which the grain is stored and examine it in conjunction with the Superintendent of such warehouse. If the Chief Sampler agrees with the Superintendent that the grain should be moved, the Chief Sampler shall so notify the Custodian of the Chicago Board of Trade. If the Chief Sampler does not agree with the Superintendent that the grain should be moved, the operator of the warehouse shall have a right to appeal to the Grain Committee of the Board of Trade. If on such appeal the Grain Committee shall agree with the Superintendent that the grain should be moved, the Grain Committee shall so notify the

*Adopted February 5, 1931, effective March 30, 1931. Approved by the Illinois Commerce Commission March 24, 1931.

Custodian of the Board of Trade, and the warehouse receipts covering the above specified lot or lots of grain shall no longer be regular for delivery on Board of Trade future contracts. Upon receiving such notice, either from the Chief Sampler or from the Grain Committee, the Custodian shall notify the holder, or holders, or their agents, together with the President of the Board of Trade, of the total quantity of the grade of grain in question (selecting the oldest registered warehouse receipt for such grain first, then such additional registered warehouse receipts in the order of their issuance as may be necessary to equal such total quantity of grain). When this information reaches the President he shall appoint a Committee consisting of five disinterested handlers of cash grain, which Committee shall meet at once and after taking into consideration various factors that establish the value of the grade of the receipts held by such owner or owners, shall determine the fair value of the grain, which price shall be that to be paid by the operator. If the price offered is not satisfactory, a Committee appointed by the President of the Board of Trade (at the request of such owner), shall procure other offers for such grain, and such offers shall be immediately reported to the owner or his agent. If the owner refuses to accept any such offers, he shall have the two following business days to order and furnish facilities for loading such grain out of store, and during this period the warehousemen shall be obliged to deliver the grain called for by the warehouse receipts, but not more than three days may elapse after notification by the Custodian to the holder of the receipt before satisfactory disposition shall have been made of the grain, either by sale to the operator or by the ordering out and furnishing facilities to load the same, provided the amount of such grain does not exceed 100,000 bushels in any one elevator. If the amount of grain in question exceeds 100,000 bushels the owner, or owners, of the warehouse receipts shall be allowed forty-eight hours of grace over and above the before men-

tioned three days for each 100,000 bushels in excess of the first 100,000 bushels.

(c) In the event that the holder of the warehouse receipt, or his agent, fails to move the grain or make other satisfactory disposition of same within the prescribed time, it shall be held for his account, and any loss in grade sustained shall likewise be for his account, and it shall be the duty of the warehouseman to post this grain in the regular manner prescribed by the Illinois Law.

(d) Nothing in the foregoing provisions shall be construed as prohibiting the warehouseman from fulfilling contracts from other stocks under his control.

CHAPTER 11.

Clearing House.

310. Settlement by Clearance.—All contracts, including contracts made by members upon behalf of non-members, shall be cleared through the Clearing House, and all such contracts shall be subject to the Charter, By-Laws, and Clearing Regulations of the Clearing House; except in security contracts unless otherwise stipulated in the bid or offer or it is otherwise agreed by the parties to the contract, or the Clearing House, either in the particular instance or in pursuance of its By-Laws and Resolutions, will not act in the matter.

‡311. Rights of Board.—During 1936 the Board, by the affirmative vote of fourteen Directors and thereafter by the affirmative vote of twelve Directors, may discontinue the clearance of commodities and securities contracts through the Clearing House, and provide for such other method of clearance as may be selected.

*312. Clearing House By-Laws.—The Clearing House may not change its By-Laws without the consent of the Board.

†313. Membership in Clearing House.—The Clearing House may prescribe the qualifications of its own members. However, no person, corporation, or partnership shall become a member of the Clearing House until approved by the Board. An individual may be a member of the Clearing House. A corporation may be a member of the Clearing House for the purpose of clearing its own trades exclusively if two of its officers are members of the Association and have registered their memberships for the use of the Corporation with the approval of the Clearing House Committee under the provisions of Rule 226; a corporation may be a member of the Clearing

‡Amended January 12, 1934 (effective January 16, 1934); amended December 9, 1935 (effective January 14, 1936).

*Amended November 7, 1929.

†Amended November 7, 1929; to become effective January 1, 1930: postponed to April 1, 1930; postponed to October 1, 1930; amended September 22, 1930; amended July 17, 1935. Amended January 6, 1942. See "Rulings."

House and clear trades for others if four of its officers are members of the Association and have registered their memberships for the use of the Corporation with the approval of the Clearing House Committee under the provisions of Rule 226; a partnership may be a member of the Clearing House when general partners, members of the Association, shall, with the approval of the Clearing House Committee, register their memberships for the use of the partnership under the provisions of Rule 226, as follows: (a) two members shall register when the partnership consists of two partners; (b) three members shall register when the partnership consists of from three to five partners; (c) four members shall register when the partnership consists of from six to ten partners; (d) five members shall register when the partnership consists of from eleven to fifteen partners; (e) six members shall register when the partnership consists of from sixteen to twenty partners; (f) seven members shall register when the partnership consists of from twenty-one to twenty-five partners; (g) eight members shall register when the partnership consists of from twenty-six to thirty partners; (h) nine members shall register when the partnership consists of from thirty-one to thirty-five partners; (i) ten members shall register when the partnership consists of thirty-six or more partners.

A lawfully formed and conducted cooperative association of producers, having adequate financial responsibility engaged in any cash commodity business having at least two officers who are members of the Board of Trade may clear trades through the Board of Trade Clearing Corporation, providing said two officers, with the approval of the Clearing House Committee register their memberships under the provisions of Rule 226 for the benefit of such cooperative association.

No corporation which is a member of the Clearing House may clear securities contracts through the Clearing House.

Where a partnership in an attempt to evade the provisions of this rule forms a corporation for clearing purposes, such corporation to clear trades must have registered the same number of Board of Trade members as was required by the partnership from which it was formed.

This rule as amended will become effective on January 1, 1943 for corporations and partnerships now registered, and as to corporations and partnerships registered hereafter shall become effective from the passage of this rule.

314. SUBSTITUTION.—Where a future delivery contract is cleared through the Clearing House, the Clearing House shall be deemed substituted as seller to the buyer, and shall also be deemed substituted as buyer to the seller, and thereupon the Clearing House shall have all of the rights and be subject to all of the liabilities of the original parties with respect to such contract.

315. OFFSETS.—Where a member buys and sells the same commodity for the same delivery, and such contracts are cleared through the Clearing House, the purchases and sales shall be offset to the extent of their equality, and the member shall be deemed a buyer from the Clearing House to the extent that his purchases exceed his sales, or a seller to the Clearing House to the extent that his sales exceed his purchases.

316. TRADES FOR CUSTOMERS.—Where a member makes a trade for future delivery of commodities for a customer (member or non-member) and the trade is cleared through the Clearing House, the Clearing House becomes the principal who is liable to the customer and to whom the customer is liable, subject to the following: (a) the trade shall remain subject to the Charter, By-Laws, and Resolutions of the Clearing House; (b) the trade may be offset against other trades of the clearing member as provided in Rule 315; (c) if the trade is not offset, and the member being a seller, tenders a delivery notice to the Clearing House,

the member to whom such notice is passed, under Rules 286 and 287, shall thereupon be substituted as buyer in lieu of the Clearing House; (d) if the trade is not offset, and the member, being a buyer, receives a delivery notice, under Rules 286 and 287, the issuer of such notice shall thereupon be substituted as seller in lieu of the Clearing House; (e) if the trade is offset, the Clearing House shall be discharged, and the member himself shall be substituted for the Clearing House as principal. For the purpose of this Rule, the first trades made shall be deemed the first trades offset

CHAPTER 12.

Cash Grain.

*330 Scope of Chapter.—All exchange contracts for the purchase or sale of cash grain including grain to arrive shall be subject to the provisions of this Chapter, except that the provisions of Rules 331, 332, and 333 shall not apply on grain to arrive from points on or west of the Missouri River on grain originating west of the Missouri River.

‡331. Grain to Arrive.—The Board shall maintain a desk in the Exchange Hall in charge of a reporter, to whom, during regular trading hours, bids may be submitted to buy grain to arrive. Members desiring to buy grain to arrive during such hours must submit bids to the reporter, who shall immediately post on a blackboard the highest bids submitted. All bids shall specify the kind of grain, the billing, the grade, the price, and the time of shipment. The posting of a higher bid cancels all lower bids for the same grade of the same grain for the same shipment. Unaccepted bids may be withdrawn by notice to the reporter and shall promptly be erased from the blackboard. The highest unwithdrawn bid constitutes an open offer to buy, which may be accepted by any other member who may compel the bidder to take at least one carload. The last posted and unwithdrawn bids at the close of the regular market shall constitute the closing prices of the day for the particular grades, billing, and shipments specified in such bids.

†332. Bids During the Session.—During the session, members are prohibited from bidding the country for wheat, corn, rye, oats and soy beans to arrive at prices in excess of the last posted prices less the following minimum charges; on purchases from non-members, 1%, with minimum charges of 1c

*Amended October 7, 1931.
†Amended July 20, 1936; Aug. 24, 1938. See "Rulings."
‡See "Rulings."

per bushel on wheat, corn, rye and soy beans, ¾c per bushel on oats; on purchases from members ¾ of one per cent, with minimum charges of ¾c per bushel on wheat, corn, rye, and soy beans, and ½c per bushel on oats.

*333. Bids After Session.—After the session, members are prohibited from bidding the country for grain to arrive at prices in excess of the closing prices of the day less the minimum charges above specified, except as follows: a member having a bona fide bid from a buyer in Chicago in excess of any closing price may bid the country such bid price less the regular charges. A member who has made bona fide bids to not less than five members in the cash grain business in excess of any closing price may bid the country the price named in such bids less the regular charges. Members thus bidding in excess of any closing price must file with the Secretary before 8:00 A. M. of the following day, a statement showing the prices at which they bid the country and the facts justifying such bids under this Rule.

334. Purpose of Charges.—The charges prescribed by Rule 332 are designed to cover the expense of handling and financing grain in Chicago; hence such charges need not be deducted where grain is purchased from a member in business in Chicago who handles and finances the grain in Chicago.

335. Expiration of Bids.—All bids to the country for grain to arrive made during the session must be for acceptance in five minutes or less after their receipt, and similar bids made after the session must expire at 9:30 A. M. the following day.

336. Time of Shipment.—On sales to arrive, unless otherwise agreed, shipments shall be made within ten calendar days from the date of sale, except that when sales are made as "now loaded" or "loading today," shipment shall be made not later than the following day. Where sales are made for immediate shipment, shipment shall be made within three

*See "Rulings."

days. Where sales are made for quick shipment, shipment shall be made within five days. Where sales are made for prompt shipment, shipment shall be made within ten days. In computing the number of days, the date of the contract shall be excluded, but Sundays and holidays shall be included.

337. REGULATION AUTHORIZED.—The Board, by Regulation, may impose further conditions relative to trading in grain to arrive.

338. CARLOAD DEFINED.—Unless otherwise agreed, a carload of wheat shall be understood to contain 1,400 bushels; a carload of corn, kaffir, milo maize, feterita, and rye shall be understood to contain 1,500 bushels; a carload of oats shall be understood to contain 2,000 bushels; a carload of flaxseed shall be understood to contain 1,000 bushels; a carload of timothy, Hungarian, millet, and cloverseed, shall be understood to contain 36,000 pounds; a carload of barley shall be understood to contain 1,400 bushels.

*339. CONTENTS OF CAR.—Where the subject of the sale is the contents of a car, the entire load shall constitute a proper delivery provided it is not less than the marked capacity of the car.

340. CAR OF SPECIFIED CAPACITY.—Where the subject of the sale is a car of a specified capacity, and that capacity car is delivered, the marked capacity of the car shall be the minimum quantity deliverable, and 10 per cent above the marked capacity of the car shall be the maximum quantity deliverable. In case of oats, settlement shall be made at the contract price where the quantity delivered is not less than 80 per cent of the quantity contracted for. Within these limits, the price payable shall be the contract price per bushel, without adjustment.

†341. DELIVERY OF WRONG CAPACITY CAR.—Where the subject of the sale is a car of a specified capacity, and a different capacity car is delivered, settlement shall be made at the contract price for the specified capacity as contracted for.

*Amended December 9, 1936.
†See "Rulings."

subject to adjustment for any excess or deficit under Rule 342. In case of oats, settlement shall be made at the contract price where the quantity delivered is not less than 80 per cent of the quantity contracted for. The seller must promptly notify the buyer when the car delivered is not of the capacity contracted for.

342. Excess or Deficit.—Where there is an excess or deficit upon delivery, such excess or deficit shall be settled for on the basis of the market price at the time when such excess or deficit becomes known to both parties; provided that the buyer, if he elects, may cancel the contract as to any deficit.

343. Delivery to Connecting Line.—Where grain in cars is sold for delivery to a connecting line, the buyer must give the seller the name of a carrier who will receive the cars, and the seller on the same day must order the cars delivered to such carrier. Delivery to such carrier shall constitute delivery to the buyer. If the buyer within twenty-four hours does not give to the seller the name of such a carrier, the seller may hold the cars at the buyer's risk, or may sell such cars for the buyer's account. If the seller, having received such name, does not order the cars delivered as above provided, the buyer may cancel the purchase, or may hold the seller liable for non-performance.

344. Sales by Sample.—Where grain is sold by sample or on arrival, if sold to arrive, the buyer has the privilege of official resample by the Association Sampler and must accept or reject by 11:00 A. M. the following day, unless it shall have been impossible for the Association Sampler to sample such grain, in which case the buyer shall notify the seller by 11:00 A. M. on the day following the purchase, and such grain shall be sampled as soon as possible, and the buyer must accept or reject promptly after the Association sample is received. When the Association Sampler reports cars too full for thorough resampling, the buyer has the privilege of the Association official's resample at unloading, but it shall be the

duty of the buyer to notify the seller by 11:00 A. M. on the day following the purchase, or upon delivery of the sample, if delayed as above noted, of his intention to re-examine such cars at the time of unloading.

345. Overloading.—Cars loaded too full for proper inspection and so noted on the inspection certificate are subject to re-inspection at the time of unloading.

346. Surrender of Documents.—Where grain is received from outside points, the buyer must demand and the seller must deliver, at the time of payment, an authorized railroad receipt therefor, including a copy of the order whereby the grain has been consigned for unloading to a point within the Chicago District. The grain shall not be diverted from such point of unloading without the consent of the holder of such receipt. If the grain has been unloaded under the jurisdiction of the Custodian Department of the Association, the buyer must demand and the seller must deliver, at the time of payment, an official certificate issued by such department. Failure to deliver the freight bill issued by the originating carrier shall not constitute a reason for non-payment.

347. Time of Unloading.—Where grain is sold to be unloaded, and settlement is to be made on the unloading weight, if the grain is not unloaded and weighed within seven business days after delivery to the carrier nominated by the buyer, the buyer shall pay 80 per cent of the value of the grain based on shipper's weight or car capacity, subject to final adjustment after unloading.

348. Time of Delivery.—When grain is sold in store without special agreement as to delivery, delivery and payment shall be made before 11:00 A. M. on the following day. If such a sale is specified as for cash, and the sale is made before 1:15 P. M., delivery and payment shall be made before 1:45 P. M. on the same day. Deliveries shall not be made between 11:00 A. M. and 1:15 P. M., except on Saturdays unless by

special agreement. Saturday deliveries shall be made before noon. If delivery is tendered during the temporary absence of the buyer from his office, notice shall be left, and the buyer shall then call and make payment at the office of the seller within one hour.

349. TIME OF PAYMENT.—Where commodities have been sold and delivered, invoices therefor, if presented before 1:00 P. M., shall be paid before 1:45 P. M., except on Saturdays when invoices, presented before 11:20 A. M., shall be paid before 11:50 A. M. Weight certificates must be attached to invoices. Board of Trade holidays which are not legal or Clearing House bank holidays shall not extend the time of payment.

350. WEIGHT CERTIFICATES.—Where grain is sold for shipment from outside points to Chicago, subject to Chicago weights, the purchaser or consignee must furnish the seller or consignor a weight certificate of the Association or other disinterested person.

*351. WEIGHING AND CUSTODIAN CHARGES. — The Board shall fix the fees to be charged by the Weighing and Custodian departments.

†352. INTEREST ON ADVANCEMENT.—Purchasers or receivers of to arrive or consigned commodities who make advancements upon such shipments must charge interest upon such advancements. The minimum interest rate (not less than 2½%) shall be fixed monthly by the Board and posted on the bulletin board.

353. DEFAULT OF SELLER.—A seller of grain to arrive, who finds himself unable to comply with his contract, must immediately notify the buyer. Where sellers of grain to arrive fail to make shipment according to contract, the buyer may either cancel or extend the contract, or purchase an equal quantity

*Amended December 19, 1941.
†See Regulation 1857 on Corn.

of the same commodity on the open market for the seller's account. In the latter case, if the sale is by type sample, the buyer may take not more than three days to match up the sample.

354. DEPOSITS FOR CASH GRAIN.—Buyers of cash grain may require sellers, and sellers may require buyers, to make deposits subject to the provisions of this Chapter, except that the person called shall have until the following day to make the deposit.

*355. PRINCIPAL AND AGENT.—No member receiving grain or other commodities, either directly or indirectly, shall act as principal and agent in the same transaction after such grain or commodities have arrived and been inspected. The purchase of grain or other commodities after arrival and inspection at Chicago by direct or indirect consignee constitutes a violation of this Rule.

*Adopted April 1, 1931.

CHAPTER 15.

MISCELLANEOUS.

600. SEAL.—The seal of the Association shall bear a figure of Justice with a ship in the distance surrounded with the corporate name of the Association.

601. APPROPRIATIONS.—There shall be no appropriation of money or property of the Association except for the purpose of its legitimate business or to promote the purposes of its organization.

602. JUDGES MUST BE DISINTERESTED.—A member may not serve upon the Board or upon any committee upon any trial or hearing where he has a financial interest in the result thereof, or where he is connected with a firm or corporation having such an interest.

*603. GRAIN FUTURES ACT.—Members are required to comply with all lawful provisions of the Grain Futures Act and regulations thereunder lawfully promulgated by the Secretary of Agriculture. These Rules and Regulations shall be construed to conform thereto. The Board may adopt such Regulations as may be necessary to make such act effective.

604. ADVERTISING.—No member shall publish any advertisement of other than strictly legitimate business character.

605. ADVERTISING APPROVED BY BUSINESS CONDUCT COMMITTEE.—Every advertisement of a member, including the offer to make purchases or sales of listed securities, or of securities about to be listed, shall state that such securities are listed on the Board of Trade of the City of Chicago, and unless it is in a general form approved by the Business Conduct Committee, must, before publication, receive the approval of said Committee.

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*See Regulation 1828.

606. REPEALING CLAUSE.—These Rules shall be effective upon such day as may be proclaimed by the Board. Upon the taking effect of these Rules, all former Rules and Regulations shall be repealed, except as herein provided, and except that prior transactions shall be governed by the Rules previously in effect.

607. LIABILITY UNDER PREVIOUS RULES AND REGULATIONS.—The provisions of the Rules and Regulations in force immediately prior to the adoption of these Rules and Regulations shall be superseded hereby, except that such adoption shall not affect the liability of any member of the Association for any offense theretofore committed, or any rights or liabilities theretofore acquired or incurred.

*608. TRADING ON OTHER EXCHANGES.—No member of this Association shall be permitted to trade on any other exchange in the City of Chicago whose Constitution, By-Laws, Rules, or Regulations prescribe or limit the trading privileges of our members on our own exchange.

*Adopted November 9, 1929.

CHAPTER 21.

Regulations Relating to Cash Grain Brokers.

***1010. A cash grain broker who solicits purchases of grain for shipment to the Chicago District must be a member of the Association and shall receive as compensation one-fourth of a cent per bushel on grain purchased for his principal. He shall not, however, receive such compensation on purchases of grain in which he is financially interested (whether as stockholder of a corporate seller or otherwise) or on purchases from persons from whom he receives compensation.**

*See "Rulings."

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CHAPTER 22.

Regulations Relating to Committees.

1015. Standing Committees.—Standing Committees shall be Board Committees or Members' Committees. Board Committees shall be composed exclusively of members of the Board. Members' Committees may be composed in part of members of the Board and in part of non-members of the Board. The President shall be ex-officio a member of all committees.

*1016. Board Committees.—The following committees each consisting of three or more members shall be Board committees: Claims and Insolvencies, Executive, Finance, Law, Membership and Rules.

†1017. Members' Committees.—The following committees each consisting of three or more members shall be Members' committees but at least one member of each committee shall be a member of the Board: Business Conduct, Clearing House, Cotton, Cottonseed Oil, Floor, Floor Practices, Grain, Market Report, Personnel, Provisions, Public Relations, Real Estate, Securities and Stock List, Soybean, To-Arrive Grain, Transportation, Warehouse and Weighing and Custodian.

1018. Committee on Odd Lots and Specialists.—The Committee on Odd Lots and Specialists shall have general supervision over dealings in lots of stock of less than one hundred shares and the methods of specialists. It may formulate and submit to the Board for its adoption Regulations with respect to said matters and shall require the observance thereof, when adopted.

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*Amended January 15, 1935; amended January 21, 1941.
†Amended September 22, 1936; amended September 10, 1940; amended January 21, 1941; amended September 1, 1942.

1019. COMMITTEE ON SECURITIES.—The Committee on Securities shall have general supervision over the delivery of securities on Exchange contracts, including reclamations therefor, irregularities therein, and interest and dividends thereon; due bills and contracts for future delivery; deposits on Exchange contracts; and questions arising out of such subjects. It may also permit dealings in rights growing out of securities already listed on the Exchange and shall have supervision over the trading in any rights in which dealing may be permitted.

1020. COMMITTEE ON STOCK LIST.—The Committee on Stock List shall have the following powers:

(a) To prescribe the requirements for listing securities on the Exchange;

(b) To receive and consider all applications for placing securities on the List of the Exchange, and make reports and recommendations thereon to the Board. In its discretion it may permit dealings on a "when issued" basis:

(1) In certificates of deposit for interim receipts for securities,

(2) In securities of a corporation, the securities of which are already listed on the Exchange, or

(3) In securities growing out of securities already listed,

but in every such case, a full report shall be made to the Board at its next meeting;

(c) To place upon the List without report and recommendation to the Board, obligations of the Government of the United States, or of any State, County, or City thereof, and the external dollar bonds of foreign governments;

(d) On receipt of assurances satisfactory to the Committee that an application conforming to the requirements will be made for the listing of the definitive securities, to place upon the List certificates of deposit or interim receipts for securities, or temporary securities of a corporation, securities of which are listed on the Exchange, and to direct that any such certificates of

deposit, interim receipts, or temporary securities be removed from the List and further dealing therein prohibited, but in every such case a full report shall be made to the Board at its next meeting;

(e) To direct that any security listed upon the Exchange be removed from the List and prohibit further dealing therein upon maturity of such securities, or when it shall appear that the outstanding amount thereof has become so reduced as to make inadvisable further dealing therein upon the Exchange;

(f) To have charge of the arrangement and revisi of the printed list of securities.

*1021. Floor Practices Committee.—The Committee on Floor Practices shall have general supervision over the practices of members in trading in futures contracts on the Floor of the Exchange. Adjustments that are made to and for the account of customers arising from improper execution of orders may be authorized by the Floor Practices Committee, and all such adjustments may be charged to the account of the broker by the clearing member. Adjustments arising from errors made before orders arrive or after orders leave the Floor of the Exchange are not under the authority of the Floor Practices Committee but are under the authority of the Rules Committee. The Floor Practices Committee may consider and investigate complaints made to it by members of the Association and the Chairman of the Committee shall make a verbal or written report to the Board of Directors of all such complaints and the disposition which the Committee has made or recommends thereof.

1022. Additional Committees.—In addition to those appointed by the President, the Board may appoint such committees as it sees fit and prescribe the duties thereof.

*Adopted September 1, 1942. See Regulations 1843 and 1871; see "Rulings."

CHAPTER 23.

Regulations Relating to the Market Report Committee.

*1030. Duties.—The Market Report Department shall be under the supervision of the Market Report Committee. The records and reports of the Department shall be considered and treated as portions of the official records of the Association and may not be given out or disseminated except pursuant to the conditions and restrictions prescribed by these Regulations.

The Market Report Committee shall require the observance of Rules and Regulations adopted relating to commissions, to partnerships, to offices of members, whether main offices or other offices, and shall report to the Board any partnership or any condition existing in an office which may appear to be detrimental to the interest or welfare of the Association.

The Market Report Committee shall have charge of all matters relating to collection, dissemination, and use of quotations in connection with commodities or securities. It shall have the power to approve or disapprove any application for quotation service to a non-member or to telephonic or telegraphic wire or wireless connection between the office of a member or a member's firm and the office of any corporation, firm, or individual not a member of the Association transacting a banking or brokerage business and it shall have power at any time to disapprove the furnishing of any such quotation service or any such wire or wireless connection and to require the discontinuance thereof. It may inquire into wire or wireless connections of every kind whatsoever between the office of a member and any member or non-member, and may require the discontinuance of any such connection.

*See "Rulings."

1031. WIRE AND OTHER CONNECTIONS.—The privilege of telephonic or other wire connection between the office of a member and the Exchange shall not be enjoyed as a right of the member, but shall rest in the discretion of the Market Report Committee or of the Board on an appeal from decision of the Market Report Committee. No appeal shall, however, suspend the operation of said decision.

The Market Report Committee, in its discretion, may grant or withhold such privilege from a member, and, in its discretion, without being obliged to assign any reason or cause for its action, may disconnect or cause to be disconnected any apparatus or means for such communication or may deprive any member of the privilege of using any public telephone or means of communication installed by the Exchange for the use of members.

1032. DECISIONS OF COMMITTEE.—Every decision of said Committee, whereby a member is deprived of any such privilege, shall be immediately posted upon the bulletin board in the Exchange, and every member shall be deemed to have notice thereof.

No member shall, after such notice shall have been posted directly or indirectly furnish to the member named therein any facilities for communication between the office of the member so named and the Floor of the Exchange or between the office of the member so named and the office of any other member.

1033. CONSENT REQUIRED FOR WIRES.—No member shall establish or maintain wire connection of any description whatsoever or permit wireless communication between his office and the office of any non-member corporation, firm, or individual transacting a banking or brokerage business, without having first obtained the approval of the Market Report Committee therefor.

The applications for such connections or means of communication shall be in a form prescribed by said Committee.

The use of public telephone or telegraph service in such manner as to amount to private connection shall be deemed to be within this Regulation.

1034. Registration with Committee.—Every such means of communication shall be registered with said Committee, together with the telegraphic, telephonic, or wireless calls used in connection therewith; said Committee may make such requirements governing said matters as it shall deem necessary or desirable.

1035. Notice.—Notice of the discontinuance of any such means of communication shall be promptly given to said Committee; and said Committee shall have power, at any time in its discretion, to order any such means of communication discontinued.

No such communication shall be other than by means of a wire or wireless system approved by said Committee.

1036. Cost of Operators.—No member shall, directly or indirectly, pay the cost of operators or any other expense pertaining to the office of a non-member; except that said Committee may permit the payment by a member of part or all of the cost of such means of communication between an office of a member and a non-member as has been approved by the Market Report Committee.

1037. Bond Salesmen.—Bond salesmen's headquarters shall not be considered as a branch office and shall not be used for the purpose of soliciting commission business, but shall be merely central points for the convenience of bond and security salesmen engaged exclusively in handling bonds or unlisted securities in adjacent territory for the account of their employers. No prices of stocks shall be posted at such headquarters.

1038. COMMISSIONS TO SECURITY SALESMEN. — *Members* may allow to security salesmen a commission on sales of listed bonds owned by the employer, provided that the profit thereon, after payment of said commission, is not less than the amount of commission required by the commission Rules of the Exchange on both a purchase and a sale of such bonds.

Members may allow to security salesmen a commission on sales of unlisted securities.

Members may allow to security salesmen a commission on the sale of listed stocks which are owned by said members where such stocks are of original issue, that is to say, purchased directly from the company by said member or his firm.

Members may allow to security salesmen a commission on the sale of listed stocks which are owned by said members and which are not of original issue, provided that the Market Report Committee shall have found upon the application of any member that it is not against the interest of the Exchange to offer any such stocks off the Floor of the Exchange publicly by advertisement or otherwise and shall not have changed such finding. Where such offering is permitted and a member or his firm desires to syndicate or to form a selling group in such stocks which are not of original issue, the following must be observed:

(a) The syndicate or selling agreement must have a fixed and reasonable date of termination and must cover a definitely stated amount of stock;

(b) A member, firm, or corporation offering stocks for sale through a selling group or syndicate containing non-members or paying a commission to salesmen must have a firm financial commitment for a substantial amount of the stock to be offered;

(c) If it is the intention of a member, firm, or corporation to form a selling group containing non-members, where no financial obligation is incurred by the members of the group except that of making payment for the stock purchased by them, or of paying a commission for dis-

pensing of the stock, any members of the Exchange shall upon application to the selling group be allowed such a commission as will enable them to sell the stock to their customers at the same price as members of the selling group are authorized to sell to the public.

In all cases where commissions are allowed to security salesmen, members may allow similar commissions to such other employees in their offices as may be approved by the Market Report Committee.

1039. EMPLOYEES.—The Market Report Committee may require that the name, remuneration, term of employment, and actual duties of any employee of a member, firm, or corporation, shall be stated to the Committee, together with such other information with respect to the employee as the Committee may deem requisite; and said Committee may, in its discretion, disapprove of said employment, remuneration, or term of employment.

1040. CONDUCT OF PRIVATE OFFICES.—The Market Report Committee is empowered to examine into the conduct of all private offices or places of business receiving the continuous market quotations of the Association, and, in such places where the Committee shall deem the continuance of such service detrimental to the best interests of this Association, the Committee shall forthwith order a discontinuance of the quotations and shall report the facts immediately to the Board, which shall take whatever further action is necessary to uphold the good name and dignity of this Association.

No member shall employ in any office, without the prior approval in each case of the Market Report Committee, any person for the solicitation of business or any so-called "customers' man" or "solicitor."

*1041. TELEPHONE WIRES.—The dissemination of continuous market quotations of the Association over all telephone wires is strictly prohibited, except by permission of the Market Report Committee, and such permission, if granted, shall

*Amended February 4, 1930.

be subject to the charges prescribed by Regulations 1047 and 1048. This does not prohibit ordinary conversation where dissemination of quotations is not contemplated.

1042. COMMUNICATION FROM THE EXCHANGE HALLS. — No member of this Association shall, by messenger, signal, telephone, telegraph, or any other means whatsoever, convey or transmit continuously the market quotations from the Exchange Halls to any person, firm, or corporation located off the Exchange Halls.

†1043. MEMBERS RESPONSIBLE FOR CORRESPONDENTS.—Members doing business with correspondents must keep themselves well informed regarding their financial standing and shall immediately report to the Secretary any information that does in any way indicate that a correspondent is insolvent, or threatened with insolvency, or guilty of any irregularities or practices affecting the good name of the Association.

*1044. RADIO BROADCASTING.—

(a) No member, firm, corporation, or employee thereof shall transmit, by any kind of radio service, any market quotations, either securities, futures, cash grain on spot or to arrive, or any market information or gossip without the approval of the Board.

(b) No quotations except those prevailing at the opening of the market; and at each thirty minutes thereafter; and at the close of the market, may be used for broadcasting.

(c) Radio broadcasting stations must name the periods at which the quotations prevailed and designate them as furnished by the Board of Trade of the City of Chicago.

(d) No member, firm, corporation, or employee thereof shall in any manner claim or be given credit for furnishing information for radio service, except as provided in section (e) of this Regulation.

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*Amended August 23, 1932; April 24, 1934; September 15, 1936 and December 1, 1936.

†See "Rulings."

(e) Upon application, the Market Report Committee may grant permission to individuals, firms, corporations, or employees thereof, to furnish the quotations of this Association to radio stations. The name of the individual, firm, corporation, or employees thereof, may be mentioned at the beginning and at the end of each period at which quotations are broadcast. In case there is more than one request to furnish this service at any location, the Committee may divide the time equally upon a yearly basis.

1045. COTTON QUOTATIONS.—The time and price at which every transaction for the future delivery of cotton is made shall be reported to the Cotton Registrar by the seller and/or buyer within five minutes of its consummation, except on the calls, when transactions in each month must be reported before the next month is called; if a transaction is not so reported by either party, it shall not be recorded in the record of transactions without the written consent of the Cotton Committee.

1046. COTTON PRICES.—Transactions in cotton made in any month at a price above that at which such month is offered or below that which is bid for such month, until what is offered shall be taken or what is bid for shall be supplied, shall not be deemed to be made at the market price for such month and shall not be reported or recorded in the record of transactions. No transaction that is not made by open outcry shall be reported or recorded in the record of transactions.

1047. COST OF WIRES TO MEMBERS.—Whenever the market quotations of any commodities or securities are transmitted over any private wire running into any office of any member, such member shall pay to the Association $15.00 per month for each office of such member outside of Chicago into which such wires run. A member who has his main office in Chicago, and branch offices outside of Chicago, shall pay as rental the sum of $7.50 per month for each of his branch offices having such wire connections. Applications for such

wire connections must first be approved by the Market Report Committee. When such a wire connection is made, the member shall report to the Secretary in writing, giving the number and location of his offices having such wire connections. Failure to make such report or to pay rental, as above provided, shall subject the offending member to suspension and his wire connections shall be discontinued until this Regulation shall have been complied with.

1048. Cost of Wires to Non-Members.—Whenever the market quotations of any commodities or securities are transmitted over any private wire, leased by a member which runs into the office of a non-member, there shall be paid as rental to the Association the sum of $15.00 per month for each such non-member connection. If, however, during a particular month, the continuous quotations of the Association were not posted and no business in commodities or securities was transacted in a particular office, no rental shall be payable for that office during that month. Rentals payable hereunder shall be paid by the member or non-member as they may agree, but the member shall be responsible to the Association for the collection and payment thereof. All such wire connections, before they are made, must be approved by the Market Report Committee. Members having such wire connections shall make signed reports each month to the Secretary showing what rentals were payable for the preceding month. If a member fails to make such report or to pay rentals as herein provided, he shall be suspended and his wire connections shall be discontinued until this Regulation shall have been complied with.

CHAPTER 24.

Regulations Relating to Corporations.

*1060. Registration for Members' Rates in Futures and Securities.—A member desiring to register his membership in the name of a corporation, so as to entitle such corporation to members' rates, shall submit to the Board a statement giving the name of such corporation, the business in which it is engaged, its authorized and outstanding capital stock, and a complete balance sheet disclosing its assets and liabilities. Such statement shall also disclose the relationship existing between the member and such corporation, and shall also disclose the number of shares of such corporation owned by the member in his own right. The statement must show that the member is a bona fide and active executive officer of the corporation and is empowered by the by-laws or directors of his corporation to enter into contracts for and on behalf of the corporation. No member shall register his membership in the name of more than one corporation, nor shall any membership registered in the name of a partnership be registered in the name of a corporation.

†1061. Registration for Trading on the Floor in Cash Grain and Provisions.—Any two members of this Association, who are officers of a corporation and desire to register their memberships in this Association in the name of such corporation, so as to entitle such corporation to trade in cash grain or provisions in its own name, shall submit to the Board a statement giving the name of such corporation, the business in which it is engaged, its authorized and outstanding capital stock, and a complete balance sheet disclosing its assets and liabilities.

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*Amended December 22, 1931.

†Amended April 11, 1939 and May 23, 1939.

Such statement shall also disclose the relation existing between such two members and such corporation, and shall also disclose the number of shares of such corporation owned by each of such members in his own right. The statement must show that each of such members is a bona fide and active executive officer of such corporation and also a substantial stockholder thereof in his own right; provided, however, that the latter requirement pertaining to substantial stock ownership may be waived in the event such corporation

(a) is a lawfully formed and conducted cooperative association of producers, or

(b) is a wholly-owned subsidiary of a corporation registered under the provisions of Rule 226, and such parent corporation shall guarantee, in a form and manner satisfactory to the Board, all obligations and liabilities of such subsidiary corporation, and compliance by such subsidiary corporation with the Rules and Regulations of the Association.

A membership which is registered in the name of a corporation may not be registered in the name of another corporation or a partnership.

*1062. Cooperative Association of Producers. A lawfully formed and conducted cooperative association of producers having adequate financial responsibility, engaged in any cash commodity business, conforming to the following requirements:

First: The Cooperative Association must have not less than 75 per centum of the voting capital stock, or membership capital, in good faith owned and controlled, directly or indirectly by producers of agricultural products;

Second: The Cooperative Association, if organized without capital stock, shall not allow a member of the Cooperative Association more than one vote, or if organized with capital stock, the Cooperative Association shall not pay dividends

*Adopted November 16, 1943.

on any class of capital stock in excess of 8 percent per annum cumulative;

Third: The Cooperative Association shall not, during any fiscal year, deal in the products of non-members of the Cooperative Association to an amount greater in value than such as is handled by it for members of the Cooperative Association;

Fourth: The Cooperative Association, not more frequently than semi-annually, may pay out of its accumulated or current earnings and savings, patronage dividends to members of the Cooperative Association only and upon the basis of business transacted with such members for the period covered by transactions in which such earnings and savings have accrued; and

Fifth: The Cooperative Association, if domiciled in the State of Illinois, must be organized under the provisions of "The Agricultural Cooperative Act of 1923," enacted by the General Assembly of the State of Illinois, or, if organized under the laws of some other state, must be qualified to do business within the State of Illinois under the provisions of "The Agricultural Cooperative Act of 1923" and operate within the provisions thereof, may be entitled to members' rates by virtue of a membership owned by one of its duly authorized representatives, and may be entitled to do business in cash grain and provisions on the floor by virtue of the memberships owned by two of its duly authorized representatives. A member who desires to designate such a cooperative association of producers for that purpose shall make application to the Board, giving therein such information as may be requested (Rule 226). If the application is granted, such cooperative association of producers, as well as such member, shall be entitled to members' rates. Such designation may be terminated at any time by the member, or by the Board. A cooperative association of producers entitled to members'

rates shall be subject to all requirements and prohibitions contained in the Rules and Regulations applicable to members, (except as may be exempted by the Commodity Exchange Act and the Regulations of the Secretary of Agriculture issued thereunder) and in such cases the member shall be subject to discipline and the membership subject to sale by the Board for the acts or delinquencies of the cooperative association.

CHAPTER 25.

Regulations Relating to Partnerships.

1070. Number of Partners.—No member shall conduct business under a firm name unless he shall have one general partner; provided, however, that if by death or otherwise the general partners in the firm registered with the Association are reduced to the Association member, he may continue business in the firm name for such period only as may be allowed by the Market Report Committee.

*1071. Formation of Partnerships.—When a member intends to form a partnership or admit other individuals to an existing partnership he shall notify the Secretary in writing to that effect. The Secretary shall refer the application to the Market Report Committee, which shall have authority to approve or deny the request. On receipt of such notice from a member the Secretary shall cause the same to be posted upon the bulletin board of the Association. A member shall promptly notify the Secretary of the retirement from a partnership of which he is a member of any individual or of the dissolution of such partnership.

1072. Partners' Interest in Firm.—Every partner in a firm represented on the Association must have a fixed or determinable interest in its entire business, unless a different arrangement is approved by the Market Report Committee.

1073. (Rescinded March 10, 1942.)

1074. Partner of Suspended Member or Insolvents.—A member shall not form a partnership nor, unless permitted by the Board, continue in a partnership with a suspended

*Amended June 25, 1929.

member of the Association, nor with any person who has been expelled therefrom, nor with an insolvent person or a person who may have previously been a member of the Association and against whom any member holds a claim, arising out of transactions made during the time of such membership and which have not been released or settled.

1076. Discipline of Partners.—A member of the Association who is a general partner in a firm represented thereon is liable to the same discipline and penalties for any act or omission of said firm as for his own personal act or omission; but the Board may, in its discretion, by a vote of not less than two-thirds of its members present, relieve him from the penalty therefor.

1077. Dissolution of Partnership.—Whenever it shall appear to the Board that a member has formed a partnership or has become an officer, employee, or stockholder of a corporation or established an office or headquarters or is individually, or through any member of his firm, interested in a partnership or business, or has formed any business connection whatever whereby the interest or good repute of the Association may suffer, the Board may require the dissolution of any such partnership or discontinuance of such business office, or headquarters, or business connection as the case may be.

1078. Relations Controlling Policy.—Whenever it shall appear to the Board that a member, individually or through his firm or a partner or partners therein, has such a business connection with a corporation or association that the corporation or association dominates the business of the member or firm or controls the policy of such business, the Board may require the discontinuance of such business connection.

1079. Members' Rates in Cash Grain and Provisions.—Any two members of this Association, who are members

of a partnership and desire to register their memberships in this Association in the name of such partnership, so as to enable such partnership to trade in cash grain or provisions in its own name, shall submit to the Board a statement giving the name of the partnership, a list of the partners, and the business in which the partnership is engaged. The statement must show that the two members are substantial and active members of the partnership. Any membership which is registered in the name of a partnership may not be registered in the name of another partnership or corporation.

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CHAPTER 27.

Regulations Relating to the Custodian Department.

*1230. The Custodian Department shall be in charge of a Custodian who shall be under the supervision of the Weighing and Custodian Committee. The Custodian shall give bond with sufficient sureties in such sum and upon such conditions as may be required.

*1231. Where commodities are sold, to be unloaded into private elevators and paid for after unloading, the Custodian shall take possession of such commodities in such private elevators, and shall hold possession thereof as agent for the seller until the purchase price thereof shall have been paid. He shall issue to the seller a certificate, as hereinafter provided, which shall describe the commodities in his possession, and he shall not thereafter release possession of such commodities except upon surrender of such certificate.

*1232. A Custodian, duly appointed by the Board, shall be placed at such private elevators or other buildings or places of private ownership as the Custodian Committee shall deem necessary and such Custodian shall keep a daily record containing the official Board of Trade weights of all commodities dealt in under the Rules and Regulations of the Association and weighed by the Official Board of Trade Weighmaster, which commodities have been unloaded into or loaded out of such private elevators or other buildings or places of private ownership.

*1233. When any of such commodities shall be unloaded as above provided, the Custodian shall promptly issue and deliver to the party for whose account the same is unloaded an

*Approved by the Illinois Commerce Commission June 29, 1933.

official certificate as evidence of such unloading, except in cases where the commodity is loaded out in whole or in part on the same day as received, in which case the Custodian shall procure the shipping receipt or bill of lading given for such property and shall deliver the same to such party with a certificate for such quantity that is not loaded out—the two together representing the entire quantity unloaded.

*1234. The Custodian shall not allow the loading out of any commodity from such private elevators or other buildings or places of private ownership, except as provided in Regulation 1233, until the proprietor or manager thereof shall surrender to him for cancellation official certificates, properly endorsed, equal to the amount of the commodities to be loaded out, and such commodities shall be weighed by the Weighing Department of the Association.

*1235. The Custodian shall estimate daily the amount of shrinkage incidental to the handling, cleaning, or clipping of grain, also of any variation between the "in" and the "out" weight, and report same at once to the proprietors or managers, and it shall be their duty to surrender to the Custodian certificates for cancellation sufficient to cover same. It further shall be the duty of the proprietors or managers to keep in store at all times, in excess of all outstanding certificates, a quantity equal to at least 3 per cent of the total quantity in store represented by outstanding certificates, in addition to the estimated amount of shrinkage, as hereinbefore provided.

*1236. In such places where the commodities herein described are manufactured into products or the original commodity otherwise changed in form, the Custodian may permit the proprietors or managers thereof to use such commodities without the surrender of Custodian certificates for

*Approved by the Illinois Commerce Commission June 29, 1933.

the same whenever the said proprietors or managers shall furnish to said Custodian written evidence of the consent to such use by the party for whose account the said commodities were unloaded; provided, however, that the Custodian shall not issue any certificates for commodities used under such circumstances.

*1237. It shall be the duty of the Custodian to require the official weighing of all commodities in each and every private elevator, or other building, or place of private ownership hereinbefore described, by the Board of Trade Weighmaster as often as in his judgment may be needful to enable him to accurately determine the quantity of commodities stored in such elevators, or other buildings, or places of private ownership, for the purpose of verifying the correctness of his outstanding certificates; or the Custodian Committee may at any time, in the exercise of its discretion, order the weighing of such commodities.

*1238. Whenever, in the judgment of the Custodian or of the Custodian Committee, it shall be deemed advisable, the proprietor or manager of such private elevators, other buildings, or places of private ownership, shall be required to increase his ordinary line of fire insurance upon such private elevators, other buildings, or places of private ownership, and the contents thereof for which Custodian certificates have not been surrendered for cancellation, to such an amount as may be determined by the Committee or the Custodian; and such proprietor or manager shall allow an inspection of the amount and character of said insurance carried by such proprietor or manager whenever requested by the Custodian Committee or by the Custodian.

*1239. Whenever such a course shall, in the judgment of the Custodian Committee, be deemed necessary, it is hereby

*Approved by the Illinois Commerce Commission June 29, 1933.

empowered to impose upon such proprietors or managers the duty of preserving the identity of all grain thereafter unloaded into such private elevators, or other buildings, or places of private ownership; or, in lieu thereof, the adoption of such measure or measures as in the judgment of the Custodian Committee may be adequate to protect the parties for whose accounts the commodities aforesaid were unloaded.

*1240. The buyers of commodities sold and delivered as hereinbefore provided shall tender in payment certified checks whenever the party for whose account such commodities have been unloaded shall give reasonable notice of his intention to demand the same and the latter may retain in his possession the Custodian's certificate until such certified check is thus tendered.

*1241. It shall be the duty of the Custodian at such private elevator or other building or place of private ownership at the close of each day to seal the engine, shipping bins, or other bins, or to adopt any other measures which in the judgment of himself or the Custodian Committee are necessary to prevent the removal of grain or other commodities from such private e' vator, or other building, or place of private ownership during the absence of such Custodian.

*1242. All such commodities unloaded as aforesaid shall be held in such private elevator, or other building, or place of private ownership and shall not be released therefrom except in accordance with the Rules and Regulations of this Association governing the Custodian Department, but the Custodian, his assistants, or subordinates shall not be liable in their official bonds or otherwise for any losses unless such losses are directly attributable to the negligence or misfeasance of said Custodian, his assistants, or subordinates in issuing certificates for commodities not in fact unloaded or

*Approved by the Illinois Commerce Commission June 29, 1933.

in allowing, during the hours when such private elevator, or other building, or place of private ownership is open for business, such commodities to be loaded out without requiring the surrender of official certificates for the same, and nothing herein or any custom or private agreement to the contrary shall be construed to extend such liability; provided, however, that the Board of Trade of the City of Chicago shall in no case be liable for any losses except to the extent that such losses are due to its failure to keep in force a good and reasonable bond for the honesty and fidelity of said Custodian, his assistants, or subordinates.

OFFICIAL CERTIFICATE

—OF THE—

CUSTODIAN DEPARTMENT OF THE BOARD OF TRADE
OF THE CITY OF CHICAGO

No._____

CHICAGO, ILLINOIS, _____ 19____

I hereby certify that this day at _____
under the supervision of this Department _____
pounds of _____ were unloaded from _____
Car No. _____ which will not be loaded out except upon surrender of this receipt for cancellation as provided in the Rules and Regulations of the Board of Trade of the City of Chicago governing the Custodian Department.

_____

CHAPTER 28.

Regulations Relating to Non-Members Admitted to the Floor.

1370. No visitor shall be admitted to the Floor of the Exchange except by permission of the President or a member of the Floor Committee, except as provided in Regulation 1376.

1371. Annual courtesy cards to the Press may be issued or recalled by the President.

1373. No messenger shall be permitted to enter the Exchange Room without a badge.

1374. Messengers may perform no services other than to receive messages from their employers or members representing such employers, and shall then return to the position assigned them by the Floor Committee or leave the Floor.

1375. Messengers are not permitted to run in the Exchange Hall or in the corridors of the building and shall at all times maintain decorum.

*1376. There shall be no deviation from the above Regulations except that on application of a member, the Secretary may issue a pass to the guest of a member, who then shall be permitted to accompany the member on the Floor of the Exchange. No guest shall be admitted to the Floor more than six times within any thirty-day period.

1377. The Floor Committee may recall messengers' badges for cause, and may exclude from the Floor any non-member employee of any member.

‡1379. Temporarily, non-members may be permitted to serve on telephones in the Securities Room.

†1380. Members' Room.

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*Amended January 25, 1938.
‡Adopted June 3, 1930.
†Adopted January 25, 1938; Rescinded October 19, 1943.

CHAPTER 30.

Regulations Relating to Sampling of Grain.

1520. The Grain Sampling Department shall be under the supervision of the Grain Committee. The Grain Committee, subject to the approval of the Board, shall employ a Chief Grain Sampler who shall be required to furnish bond for the faithful performance of his duties.

1521. The Chief Sampler may employ such assistance as needed, when approved by the "Department of Grain Sampling and Seed Inspection," and the Department will fix the compensation for such assistance.

1522. The Department shall make monthly reports of all receipts and expenditures. All expenses must be approved by the Board.

1523. The charge for services rendered by this Department shall be uniform to all persons, firms, and corporations, and shall not be changed without proper notice being given of the proposed change, such notice to be posted in a conspicuous place in the Exchange Halls. This Department may charge a higher rate in special cases outside of the Chicago district, but in no case can it make any reduction from the established rates.

1524. Nothing in the foregoing Regulations shall prevent the buyer or seller, or his representative, from personally examining any car or cargo of grain bought or sold under the Rules and Regulations, but under no circumstances can a Board of Trade official certificate be given by the party thus examining; any unofficial party, or his employer, inspecting any car or cargo of grain shall not have the right of appeal to the Grain Committee, unless the grain has been loaded under the supervision of the Official Sampler of this Department.

*1525 (Effective October 15, 1941). The following is the schedule of charges that are to be paid to this Department:

Part I. RECEIPTS IN BULK

A Grain or seeds sold or warehoused on Chicago grades, except grain arriving in trucks, shall be resampled. The charge shall be—

(1) On carlot sales $1.00 per car, to be paid by the seller, 20c of which the seller shall collect from the buyer.

(2) On grain for warehousing, a charge of $1.00 per car shall be collected from the initial receiver or consignee. In case the commodity for warehousing is acquired by the warehouseman from a receiver, then the receiver shall collect from the warehouseman 20c per car of this $1.00 charge.

(3) On grain arriving by vessel or barge, when purchased or warehoused on Chicago grades, the charge shall be 35c per 1,000 bushels or part thereof, said charge to be collected from the initial receiver or consignee. In case vessel or barge grain is acquired by the warehouseman or buyer through a receiver, then the receiver shall collect from the warehouseman or buyer 15c per 1,000 bushels of this 35c charge.

(4) In the event of actual sampling of grain or seeds arriving in trucks the charge shall be 50c per truck, to be collected from the parties ordering such sampling.

B (1) On grain or seeds arriving and unloaded at Chicago elevators, from trucks whether or not sold or warehoused on Chicago grades or from barges or from vessels, not sold or warehoused on Chicago grades, the charge shall be 20c per 1,000 bushels or part thereof, without actually being sampled, to be paid by the buyer.

(2) On grain or seeds received in Chicago by buyers via rail from outside markets, not sold or warehoused on Chicago grades, the charge shall be 25c per car, to be paid by the buyer, without actually being sampled, but in the event such is actually sampled the regular carlot charge is to be paid by the buyer.

Part II. SHIPMENTS IN BULK (Effective January 2, 1942.)

A Members of the Association who ship from Chicago grain or seeds that have been sold or offered for sale on so-called trade names, or on warranties, specifications,

*Amended October 14, 1941; December 23, 1941; June 9, 1942.

or stipulations as to quality beyond such as are usually shown in the grain inspection certificates issued by the Division of Grain Inspection, Department of Agriculture, State of Illinois, in compliance with the United States Grain Standards Act, shall have such grain or seeds sampled by this Department and secure a proper Certificate of Approval from the Chief Sampler.

B Whenever this Department shall be called upon to sample grain or seeds, loaded from Chicago elevators for cross-town or outbound movement from Chicago, the following charges shall be collected by this Department from the parties ordering such sampling:

(1) Carlots, 75c per car;

(2) Vessel or barge lots, 35c per 1,000 bushels or part thereof;

(3) Truck lots, 50c per truck.

C On grain or seeds loaded from Chicago elevators on which no samples have been ordered and no actual sampling performed by this Department, the following charges shall be collected by this Department from the operators of the elevators from which such shipments have been made:

(1) Carlots, 15c per car;

(2) Vessel, barge or truck lots, 10c per 1,000 bushels or part thereof.

Part III. Receipts or Shipments in Bags

The fee for resampling grain or seeds in bags shall be $2.00 per car or $1.00 per 1,000 bushels or part thereof, in vessels or barges.

Part IV. (Effective January 2, 1942.)

The charge for sampling bulkhead cars shall be at the rate of one carlot charge for each bulkhead portion.

1526. In case the Official Sampler or any other party at interest, *i. e.*, the buyer or the seller, should thus complain to the State Department and fail to have his complaint properly or favorably considered by the State Department, it shall be the duty of the Sampling or Grain Committee to listen to his complaint, and, if it is in their judgment reasonable, the other parties at interest shall be notified and the matter taken up by the Grain Committee with the State Department—all parties at interest being given an opportunity of being present at such hearing.

1527. When grain is sold subject to the approval of the Official Sampler, either party to the transaction may appeal from the decision of the Official Sampler to the Grain Committee, and the judgment of the Grain Committee shall be final and binding upon all parties interested.

1528. The appeal shall be taken by written notice to the Secretary, accompanied by a fee of $5.00 per car, $10.00 per canal boat, or $50.00 per vessel. Such fee shall be equally divided between the members of the Committee who take part in the appeal. If the appeal is in favor of the party taking the appeal, he shall be reimbursed his costs by the other party. The Grain Committee may decide the appeal either by examination of the grain or by sample taken under their direction.

1529. Non-members may not submit samples of grain in the Exchange Hall in competition with samples submitted by members.

CHAPTER 32.

Regulations Relating to Solicitors and Customers' Men.

*1600. Definition and Duties.—A solicitor is any one whose principal duties are the solicitation, acceptance and servicing of business in commodities and securities that may be dealt in or listed on this exchange. Managers of members' branch offices receiving the quotations of this Association must be registered as approved solicitors. Solicitors may be members or non-members and unless employed "abroad" must give their entire time and service to one employer at a fixed salary, which shall be for a period of at least six consecutive months. After such six months' continuous period, salaries of approved solicitors may be advanced not oftener than every three months. The salary of a solicitor whose registration may be transferred to another member shall not be greater with his new employer and no advancement in said salary may be made until six months shall have elapsed. A solicitor may not be actively engaged in any other business. A member may not act as a solicitor if at the same time he is acting as a cash grain broker as defined in Regulation 1010. Nothing in this Regulation shall at any time be construed to prevent the employer discharging said solicitor, reducing said solicitor's salary or accepting said solicitor's resignation at any time said employer may elect, provided, however, that said employer must immediately notify the Membership Committee of such discharge or resignation.

†1600-A. New Registration of Solicitors.—The Membership Committee shall require all solicitors and branch office managers now registered with the Association to file a new

*Amended February 27, 1934; July 10, 1934; June 8, 1937.
†Adopted October 17, 1939.

registration application on the form prescribed by Regulation 1608.

1601. NON-MEMBER SOLICITORS. — Non-member solicitors may not be employed, until they are first approved by the Membership Committee, and shall be dismissed on order of the Membership Committee. The employer, however, may appeal to the Board from the action of the Committee.

†1601-A. SOLICITORS EXAMINATION.—After January 1, 1940, all new applicants for registration as solicitors shall be required to take a solicitor's examination, offered by the Membership Committee before being approved. The cost of such examination shall be one dollar and shall be borne by the applicant.

Solicitors now registered with the Association and new applicants before January 1, 1940 shall be asked to take the solicitors' examination, but shall not be required to do so.

1602. COMMISSION-PARTICIPATING SOLICITORS. — Members only may solicit from non-members consignments of grain to the Chicago District and receive for their services one-fourth of a cent per bushel on grain consigned as the result of their efforts. Such members shall be known as Commission-Participating Solicitors. A member desiring to act as a Commission-Participating Solicitor shall register his name with the Secretary and shall state for whom he proposes to solicit such business. He may not solicit such business for more than one principal at one time. Moreover, he shall not receive such compensation upon any consignment until the consignor first notifies the principal in writing that such consignment was made at his solicitation. Such solicitor may not receive compensations on business solicited from members, or from firms or corporations in which the solicitor has an interest.

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†Adopted October 17, 1939.

*1602-A. CASH GRAIN JOINT ACCOUNT ARRANGEMENTS.—A resident member actively engaged in the handling of cash grain on the Exchange Floor may not enter into a joint account with a member, or a firm or corporation registered under Rule 226, until such arrangement is first approved by the Membership Committee.

No joint account arrangement will be approved by the Committee unless the resident member is actively engaged in handling cash grain on the Exchange Floor, does not participate in commissions earned on members' business or on business in which he has a direct *financial* interest, and does not receive a salary for services rendered *or a rebate in any form or gratuity of any kind for such service.*

1603. SERVICES DISCONTINUED.—Where the services of a solicitor are discontinued, the employer shall immediately notify the Secretary of that fact.

1604. BIDS TO ARRIVE BY SOLICITORS.—Solicitors and managers of branch offices may not bid for grain to arrive except with the full knowledge and consent of their employers.

1605. EMPLOYERS RESPONSIBLE FOR SOLICITORS.—Employers, in all instances, shall be responsible for the acts of their solicitors and branch office managers.

1606. APPLICATION FOR NON-MEMBER SOLICITORS.—Where application is made for the appointment of a non-member solicitor, the name of the employer, as well as that of the solicitor, must be posted upon the bulletin board for ten days before action by the Membership Committee. Solicitors formerly connected with bucket shops must be approved by the Board.

1607. EMPLOYMENT OF SOLICITORS.—Any member who employs a solicitor contrary to the provisions of this Chapter, or any member who acts as solicitor contrary to the provisions of this Chapter, shall be guilty of an offense against the Association.

*Adopted February 15, 1928.

1608. APPLICATION FORM.—In connection with applications for the appointment of solicitors, a verified statement in the following form shall be filed with the Secretary and shall be accessible to members:

APPLICATION FOR APPOINTMENT AS SOLICITOR.

Form of statement to be observed in applications for the approval of Solicitors under the provisions of Chapter 32 of the Rules and Regulations of the Board of Trade of the City of Chicago.

FRED H. CLUTTON,
Secretary.

This Statement is to Be Executed and Sworn to by Applicant.

Name _____ Present Age _____

Present Address _____

Complete Previous Business History.

Dates Employed From—To	Employer	Address	Reason for Leaving

(File separate statement if above space is not sufficient)

Have you any other business connections?_____

_____

Will you receive remuneration from any other source?_____

_____

Will you be employed on a salary basis if approved?_____

_____

Are you a member of any commercial exchange?_____

_____

Have you at any time been connected directly or indirectly with a Bucket Shop?_____

Do you agree to have no other business connections without the approval of this Exchange?_____

_____

(Signature of Applicant)

STATE OF _____ }
_____ COUNTY } ss.

Subscribed and sworn to before me this _____ day of _____, A. D. 194__.

_____

Notary Public.

The undersigned has made a thorough investigation of the character and business qualifications of the proposed solicitor and assures the Committee that he is worthy of every confidence and the approval of the Committee.

_____

(Signature of Employer)

*1609. Foreign Agents and Solicitors.—Members are permitted to make their own arrangements with agents and solicitors whose place of business and customers are located outside the United States and Canada, providing, however, that no arrangement so made shall, under any circumstances, allow a commission of less than three-eighths of a cent per bushel for non-members and one-quarter of a cent per bushel for members on transactions mentioned in Rule 231 (b). No member shall be permitted to make any arrangements with an individual, as a foreign solicitor or agent, who is a trader for his own account whereby such an arrangement results in giving to the agent a lower commission than he would otherwise enjoy.

†1610. Solicitors for Vessel Owners, Brokers or Agents.—A resident member whose sole occupation is the management of vessels and/or the conducting of a vessel agency or vessel brokerage business in the chartering of vessel space may employ outside of the Chicago District member or non-member solicitors on a basis of part-time or special services and may make his own arrangements with respect to the payment for such employment and services.

*Adopted September 2, 1930.
†Adopted December 12, 1933.

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CHAPTER 33.

‡Regulations Relating to Warehousing of Grain.

†1620. Prior to July first in each year, the Board shall receive applications from persons operating grain warehouses who desire to have such warehouses made regular for delivery of grain under the Rules and Regulations. The Board shall cause such warehouses to be inspected, and no such warehouse shall be declared regular unless it is conveniently approachable by vessels of ordinary draft and has customary shipping facilities. The storage rates on grain in bulk shall not exceed 1¼ cents per bushel for the first ten days or part thereof (which shall include the cost of loading in and out of the warehouse), and 1/20th of a cent per bushel for each additional day during which the grain remains in good condition.

1621. No warehouse shall be declared regular until the person operating the same files a bond with sufficient sureties in such sum and subject to such conditions as the Board may require.

*1621-A. Where the operator of a grain warehouse is a subsidiary corporation, the receipts of which are regular for delivery upon the Exchange, the parent corporation shall guarantee, in the form and manner suitable to the Directors of the Board, performance by the subsidiary corporation operating said warehouse for the storage of grain in conformance with the laws of the United States and in conformance with the Rules and Regulations of the Board of Trade of the City of Chicago, or in conformance with the laws of the State of Illinois and in conformance with the Rules and Regulations of the Board of Trade of the City of Chicago.

1622. Where a warehouse has been declared regular for a particular year, beginning and ending with the first day of

*Adopted June 15, 1937.
†See Regulation 1829 (Federal Warehouses).
‡See "Rulings."

July, but is not declared regular for the following year, receipts issued by such warehouse shall be regular for delivery for six months after such warehouse shall have ceased to be regular.

1623. Any regular warehouse may be declared to be irregular by the Board at any time for violation of the laws of Illinois or the Rules or Regulations of the Association.

1624. The proprietors or managers of such warehouses shall be in unquestioned good financial standing and credit.

1625. Such warehouses shall be connected by railroad tracks with one or more of the eastern railway lines.

1626. They shall be provided with modern improvements and appliances for the convenient and expeditious receiving, handling, and shipping of grain in bulk.

1627. The proprietors or managers shall honestly and cordially co-operate with the system of registration of warehouse receipts as established by law, and furnish to the Registrar all needed information to enable him to keep a correct record and account of all grain, together with the grades thereof, received and delivered by them daily and of that remaining in store at close of each week.

*1628. The proprietors or managers of such warehouses shall promptly, by the proper publication, advise the trade and the public of any damage to grain or flaxseed held in store by them, whenever such damage shall occur to an extent that will render them unwilling to purchase and withdraw from store, at their own cost, all such damaged grain.

1629. Any important change in the conditions of any warehouse, or disregard or evasions of the above requirements, shall at any time be a sufficient cause for declaring any such warehouse no longer a regular warehouse.

1631. In the delivery of grain from elevator or warehouse, the quantity of gross grain covered by the warehouse receipt

*See Rule 297.

shall be delivered, and any excess or deficiency between the quantity of net grain so delivered and the quantity of net grain covered by the warehouse receipt shall be paid for to or by (as the case may be) the elevator or warehouse proprietor or manager at the average market price on the day of delivery; the buyer to pay storage on the net weight covered by warehouse receipt. In the event that in final outturn there is a shortage in the gross quantity called for in the receipt the net quantity of grain required by the receipt shall be the factor in settlement, and any variation therefrom in the net amount of grain delivered against the receipt shall be paid for by the elevator or warehouse proprietor or manager to the owner of the receipt at market price on day of delivery.

1632. The proprietors or managers of such warehouses shall accord every facility to any duly authorized committee, for the examination of their books and records, for the purpose of ascertaining the stocks of all kinds of grain which may be on hand at any time. Such examination and verification shall be made at least twice each year, by the Warehouse Committee or any other duly authorized committee to be appointed by the President, which committee shall have authority to employ experts to determine the quantity of grain in the elevators and to compare the books and records of the said regular warehouses with the records of the State Grain Warehouse Registrar.

1633. No warehouse shall become or remain regular which, voluntarily or by the acts of its officers, agents, or managers, shall have theretofore qualified, or shall thereafter qualify, in any way upon or with any other Exchange with a view to, or for the purpose of, making the receipts of such warehouse regular for delivery upon such Exchange, or upon contracts entered into upon or under the rules of any other Exchange.

1634. The proprietors or managers of warehouses that are declared regular warehouses for the storage of grain are required to have all grain received in and shipped out of such

warehouses weighed by the Official Board of Trade Weighmaster.

1635. Where application is made to list as regular a warehouse which is not regular at the time of such application, all grain contained therein shall be removed from the warehouse and inspected and graded, after which such grain may be returned to the warehouse and receipts issued therefor.

*1636. TRANSIT BILLING.—The operators or managers of warehouses declared regular for delivery of grain on future contracts are required to furnish live transit billing to holders of warehouse receipts when such grain has been loaded out for shipment by rail.

REGULATION 1636 AMENDED.

On August 1, 1944, the Directors amended Regulation 1636 by inserting between the first and second paragraphs of the Regulation the following:

**Furthermore, if the owner of a warehouse receipt or his duly authorized agent wishes to determine, before ordering grain loaded, the billing he will receive, he shall advise the operator or manager of the warehouse of the amount of grain involved, and the operator or manager of the warehouse must immediately give the owner or his duly authorized agent full and exact information as to the billing that will be furnished. If the owner of the receipt or his agent orders the grain loaded within three (3) days thereafter, it shall be the duty of the operator or manager of the warehouse to furnish this identical billing. The foregoing does not relieve the operators or managers of warehouses from full compliance with the other provisions of this regulation.

For the purpose of this Regulation, live transit billing shall mean any and all such documents registered with the Central

*Adopted May 5, 1936; amended February 23, 1938 and August 1, 1944.
**This paragraph added August 1, 1944.

Inspection and Weighing Bureau, and are valid for transit purposes and entitle the shipper to the proportional or re-shipping rate from Chicago to eastern trunk line territory.

All in-bound freight bills temporarily surrendered by the owner, warehouse operator or manager to shippers shall be returned to the owner, operator or manager, and all equities in such bills shall accrue to the owner, operator or manager, and all penalties on such bills shall be assumed by the owner, operator or manager.

For the further purpose of this Regulation, all equities are defined as meaning such amounts between the local rates and the proportionals as have been paid on in-coming grain up to Chicago, and further, a holder of warehouse receipts, if he so elects, shall, by returning to the warehouseman such equity against tonnage shipped, be furnished with freight bills endorsed to his order, and, further, on Milwaukee, Wisconsin and Pennsylvania Railroad billing, or similar billing, when furnished against shipments going to eastern trunk line territory, due to the peculiar rating features, the shipper shall return to the warehouseman the difference between the regular proportional or re-shipping rate beyond Chicago and the lower rate established through the use of such billing on tonnage shipped.

†Any and all differences arising from the furnishing of billing to those loading out grain for rail shipment from such regular warehouses shall be referred to a special committee consisting of the chairman of, or in his stead one of the members of, each of the following committees: Transportation, Warehouse, To Arrive Grain, Executive, and a fifth member to be appointed by the President from the membership at large.

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†Amended February 23, 1933.

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CHAPTER 34.

Regulations Relating to Weighing of Grain.

1650. Received or transferred grain shall not be cleaned or blown before weighing, nor shall it be subjected to such handling as will cause loss in weight. This prohibition shall also apply to shipments after weighing.

1651. No dockage from actual weights shall be allowed on in-coming or out-going grain, except when unusual dirt or foreign matter is inseparably mixed with the grain, in which case it shall be the duty of the Weighmaster or his deputy to determine the amount of unusual dirt or foreign matter, and to weigh the entire contents of the car. All allowances for unusual dirt or foreign matter shall appear on the face of certificate issued for such cars.

1652. All cars when unloaded must be thoroughly swept and cleaned, except in cases where cars contain foreign matter unsuitable for mixing with grain. Then it shall be the duty of the Weighmaster or his deputy to determine the amount of grain and foreign matter to be left in the car. This amount shall be stated on the certificate of weights for each car, but such amount shall not be included in the net weight as shown by certificate.

1653. If hopper scales are used in determining the amount of grain a car contains, it shall be the duty of the elevator operators unloading such car to deliver to the scales the entire contents of said car, except where cars contain unusual dirt or foreign matter not covered by Regulation 1652, because not suitable for handling by elevator.

It shall be the additional duty of said elevator operator to clean thoroughly the unloading pits and the floor adjacent to such pits of any of the contents of said car that may have lodged there and deliver such contents to the scale to be weighed and credited to said car.

1654. The contents of each car shall be weighed in as few drafts as the scale in use will permit.

1655. The Weighmaster and his deputies shall be allowed to handle the scale beam in the performance of their duties.

1656. Certificates of weight shall bear the date of weighing, and, when issued for cars that have been loaded with grain which, for any reason, are subsequently returned to the loading elevator and wholly or partly unloaded, shall promptly be returned to the Weighing Department by the member, firm, or corporation receiving such certificates.

1657. No certificates of weights shall be issued on grain unloaded or transferred en route unless they are applied for within a reasonable time after cars are weighed and before they have had time to arrive at their destination.

1658. A straight transfer must consist of the transferring of grain from one car to another without its identity being lost. If transferred through an elevator, the grain must go direct from the western or unloaded car to the scale and from the scale direct to the eastern or car to be loaded without going into or through any house bins.

1659. All cars that are to be loaded with grain shall be in a suitable condition to carry such grain safely. In case cars are loaded that, in the judgment of the Weighmaster or his deputies, are not in proper condition to carry grain safely, the parties loading such cars shall at once be notified, and a statement of the condition of the cars shall appear on the face of the certificates of weight issued for such cars.

1660. The Weighmaster in regulating the details of his office and the service of employees may, with the consent of the Weighing Committee, make such regulations as may be requisite or desirable in order to secure correct weights.

1661. Any member, firm, or corporation of this Association receiving weight certificates not belonging to them shall return promptly such certificates to the Weighing Department, in order to facilitate delivery to the rightful owner.

CHAPTER 36.

Regulations Relating to Business Conduct Committee.

*1780. Each member, registered partnership, or registered corporation desiring to carry margin accounts of any kind for customers, or to transact business involving the purchase and sale of cash commodities for customers, must notify the Business Conduct Committee in writing, and submit to the Committee for its approval a financial statement in such form as shall be prescribed by the Committee.

*1781. Each member, registered partnership, or registered corporation whose customers' accounts are carried on the books of another member, registered partnership, or registered corporation in the names of the customers, must notify the Business Conduct Committee in writing of this arrangement.

*1782. Each member, registered partnership, or registered corporation carrying margin accounts for customers or transacting business involving the purchase and sale of cash commodities for customers shall furnish to the Business Conduct Committee, at such times as the Committee may designate, an answer to a financial questionnaire in such form as the Committee may prescribe.

*1783. The Business Conduct Committee may require any member, registered partnership, or registered corporation carrying margin accounts for customers or transacting business involving the purchase and sale of cash commodities for customers, to cause to be made as of the date of an answer to a financial questionnaire, an audit of his or its assets, liabilities, accounts and affairs, including securities held for safekeeping, in accordance with such audit requirements as may be prescribed by said Committee, and to file with said Committee a statement to the effect that such an audit has been

*Effective May 22, 1941.

made and that the answers to the questionnaire are in accord therewith.

Such statement shall in the case of any such member of the Association not a partner of a registered partnership nor an officer of a registered corporation, be signed by such member. In the case of a registered partnership, such statement shall be signed by each general partner of the partnership. In the case of a registered corporation, such statement shall be signed by at least two of the active executive officers of the corporation and each member of the Association whose membership is registered on behalf of the corporation.

The signature of one or more of the partners of such partnership, and officers of such corporation, may be waived by said Committee at the discretion of said Committee.

Such above statement shall in all cases be attested to by the auditors and a copy of the report of the audit signed by the auditors shall be retained as part of the books and records of the member, registered partnership, or registered corporation.

*1784. Each member, registered partnership, or registered corporation, not carrying margin accounts for customers, shall at least once a year and whenever called upon to do so by the Business Conduct Committee, report to said Committee, whether such member, registered partnership, or registered corporation holds securities for safekeeping. Each such member, registered partnership, or registered corporation holding securities for safekeeping, shall, at least once in each year file with the Committee a statement that all securities held for safekeeping have been checked and found to be intact, which statement shall show in what manner the verification of the securities has been made, the date thereof, and the location of such securities. This regulation shall not apply to banks and trust companies which are supervised and examined by State or Federal authority having supervision over banking institutions.

*Effective May 22, 1941.

*1785. Each corporation registered in accordance with the provisions of Regulations 1060 and 1061, which does not carry margin accounts for customers, or transact business involving the purchase and sale of cash commodities for customers, shall file with the Business Conduct Committee a detailed financial statement as of the end of its fiscal year, in such form as the Committee may prescribe. Similar statements may be required at any time during the year.

*1786. Each registered corporation must keep on file with the Business Conduct Committee a copy of its by-laws or resolutions of its directors, attested to by the secretary of the corporation, showing the authority of its designated officers to transact business on the exchange for or on behalf of the corporation.

†1787. INTERPRETING RULE 210.—Clearing members shall report to the Business Conduct Committee, at such times and in such form and manner as the Committee may prescribe, the names of and the amounts of indebtedness of non-clearing members who must secure the approval of the Committee for permission to trade by reason of indebtedness arising out of transactions executed after March 1, 1943.

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*Effective May 22, 1941.
†Adopted February 23, 1943.

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CHAPTER 37.

Miscellaneous Regulations.

1801. Crop Reports and Reporters.—Members are prohibited from employing crop reporters unless such crop reporters are first registered with and approved by the Market Report Committee. Members shall be held responsible for the reports disseminated by crop reporters in their employ.

1802. Foreign Crop Reports.—When a member, employing a crop reporter, receives from the reporter a statement concerning foreign crop conditions to which publicity is given, the member shall file immediately a verbatim copy of the report in the office of the Secretary.

*1804-A. Hours for Delivery of Grain and Provisions Through the Clearing House.—Notice of delivery of grain and provisions and memorandum of sales must be delivered to the Clearing House before 1:45 P. M. on the business day preceding the day of delivery, except on Saturdays when such notice must be delivered before 12:30 P. M. The Clearing House shall pass such notice to buyers who must take delivery and make payment before 2:00 P. M., of the business day following.

1805. Delivery Notices.—Delivery notices under Rule 285 shall be in the following form:

*Adopted October 15, 1935; amended November 17, 1936; amended October 14, 1937; amended July 26, 1938; amended October 23, 1940; to be effective after November 30, 1940.

This notice is deliverable on grain contracts in accordance with the Rules of the Board of Trade of the City of Chicago.

No. .....

DELIVERY NOTICE
OFFICE OF

.....

.....

Chicago..... 19....

.....

We have on hand ready for delivery the following described Warehouse Receipts, or B/L receipts for carlots, and hereby make tender to you of the same, in fulfillment of contract of sale to you of..... BUSHELS CONTRACT ..... at .....

Date Warehouse receipt or Inspection	Warehouse in or ordered to	No. of Warehouse receipt or car	Initial	Railroad	Date ordered	Grade	Quantity		Storage Rate	Amount
							Bu.	Lbs.		

E. & O. E.

.....

Per.....

1806. MARKET INFORMATION. — In disseminating market information, members may not refer, either directly or by code, to any definite quantities as having been bought or sold. This, however, shall not include information relative to deliveries based on substantial facts. Members who give information as to the names of buyers or sellers must take the responsibility for the accuracy of their statements. Where purchases or sales are made by a commission merchant, the name of the commission merchant, and not that of his customer, shall be given.

*1807. SALE AND TRANSFER OF MEMBERSHIP PRIVILEGES.—A member or his legal representative desiring to sell his membership privilege shall notify the Secretary that his privilege is for sale at a specified price and shall sign an authorization to transfer. An individual who desires to purchase a mem-

*Amended June 1, 1937.

bership privilege shall notify the Secretary and, when an agreement with the seller shall have been made, shall sign a confirmation of purchase and deposit with the Secretary the transfer fee (as provided in Rule 111) and fifty per cent of the purchase price of the membership. Thereupon notice of the proposed transfer shall be posted on the bulletin board for ten days. After the purchaser is approved by the Board, the sale shall be consummated, in accordance with the terms of the sale agreement, and the balance of the agreed purchase price must be paid. If the buyer is not elected to membership privilege or if he withdraws his application at the request of the Membership Committee, the sale agreement shall be revoked and the deposit or deposits made by the buyer shall be returned to him. If, however, for other reasons, the purchaser withdraws his application before his approval by the Board, the deposit which he has made may be used in part or whole to reimburse the seller for any loss he may have sustained in the prompt resale of his membership privilege. The proceeds of the sale shall be applied in accordance with Rule 112.

*AUTHORIZATION TO TRANSFER.

.....19.....

Mr. Fred H. Clutton, Secretary,
BOARD OF TRADE OF THE CITY OF CHICAGO:

I hereby authorize you to transfer my membership privilege on the Board of Trade of the City of Chicago to....., subject to his election to membership, upon receipt from him of $....., it being understood that I pay all assessments up to the end of the quarter in which my membership is sold, and that the purchaser pays the transfer fee.

.....

Signed in the presence of

....."

CONFIRMATION OF PURCHASE.

.....19.....

MR. .....

I hereby confirm my purchase of your membership privilege on the Board of Trade of the City of Chicago, in accordance with Regulation 1807 for the sum of $....., subject to my election to membership, it being understood that I pay to the Board of Trade of the City of Chicago the transfer fee of $.....

.....

Signed in the presence of

.....

*Amended December 12, 1939. Amended January 2, 1941.

1808. MEMBERSHIP IN BOARD OF TRADE GRATUITY FUND.—Every person under the age of fifty-five, who becomes a member of the Association after the passage of this Regulation, shall be required to make application for membership in the Board of Trade Gratuity Fund. Any member of the Association, hereafter becoming a member of said Gratuity Fund, shall be required to pay the assessments provided for in its By-Laws, when such By-Laws have been approved by the Board. The Gratuity Fund shall be entitled to a claim against the Board of Trade membership of any person hereafter becoming a member of said Gratuity Fund, who does not pay his assessments in accordance with its By-Laws. Such claim may be filed and become effective as provided for in Rules 112 and 113. Any member of this Association who hereafter becomes a member of the Gratuity Fund, who neglects to pay an assessment provided thereby, within thirty days after such assessment has been called for payment, shall be suspended from the Association until such assessment is paid. A member of the Association who hereafter becomes a member of the Gratuity Fund and neglects to pay any such assessment during the entire fiscal year (beginning and ending with the day of the regular election of this Association), may be expelled by the Board.

*1809. CONSTRUCTION OF RULE 231.—On all transactions where the purchase or sale of cash grain and provisions is made contingent upon the price ruling for future delivery and where the purchase or sale of future delivery is accomplished by delivery of the future at any time during the same session, fixing by such transaction the value of the cash grain or provisions so bought or sold, it shall be construed that the purchase or sale of the future delivery shall be a part of the cash transaction. Should the purchase or sale of grain or provisions for future delivery upon which the cash transaction is based be held subject to the convenience or subject to the orders of the parties with whom such transaction is made, then all such business for future delivery shall be subject to the regular rates of commission as prescribed in Rule 231.

*See "Rulings."

Where such a sale of cash grain or provisions is made after the close of the market and where the future is furnished before 11:00 A. M. on the following day, it will be construed as being at once accomplished.

*1809-A. Transfer trades, or office trades, are defined and limited to trades made upon the books of a commission merchant for the purpose of (a) transferring existing trades from one account to another within the same office where no change in ownership is involved, or, (b) transferring existing trades from the office of one commission merchant to the office of another commission merchant where no change in ownership is involved, provided that no such transfer shall be made after receipt from the Clearing House of notice of intention to deliver on such trades when such transfer is apparently made for the purpose of evading and avoiding delivery on such trades, or, (c) executing future trades in connection with cash commodity transactions or of futures for cash commodities, or, (d) to establish the price of cash commodities.

Trades made in the exchange of futures in connection with cash commodity transactions or of futures for cash commodities may be made at such prices as are mutually agreed upon by the two parties to the transaction.

All transfer trades made between the offices of two commission merchants and all office trades made in connection with cash commodity transactions or of futures for cash commodities must be cleared through the Clearing House in the regular manner.

Transfer trades from the office of one commission merchant to the office of another commission merchant must be done at commission rates prescribed in Rule 231, unless such transfers are made at the request of the transferring commission merchant or are made necessary by reason of removal or withdrawal of ordinary facilities for transacting business by the transferring commission merchant.

*Adopted July 20, 1937; December 30, 1941. See "Rulings."

Office trades made in connection with cash commodity transactions or of futures for cash commodities shall bear the commission charges as prescribed in Rule 231 as interpreted by Regulation 1809.

***1809-B. Transfer of Trades When a Member Closes an Office.—When a member commission merchant goes out of business, or closes one or more offices, or withdraws ordinary facilities for transacting business from one or more offices:**

1. **The customers of such offices may transfer their open trades to any other commission merchant without paying a commission for such transfer. (See Regulation 1809-A.)**

2. **The commission house receiving such transferred account will collect the full commission when each open trade is closed.**

   (a) If the transferred account is that of a non-member, the house taking it may pay to the transferring house the difference between the member and the non-member commission. (It should be noted that this payment is permissive and not compulsory.)

   (b) If the transferred account is that of a member, the house taking it must retain all of the member's rate of commission.

3. **If the member commission house which is closing its office is not clearing its open trades but is carrying such trades with a Clearing Member in the form of an omnibus account, the commission house closing its office must pay to such Clearing Member the usual members' rates of commission on all trades transferred out of the omnibus account whenever a P & S is rendered. This commission charge is required even though a customer of**

*Adopted March 8, 1944.

the commission house closing its office orders his open trades transferred to the Clearing Member which is carrying the omnibus account.

1810. BONDING OF EMPLOYEES.—The Secretary and Assistant Secretary shall be placed under bond of $50,000, each, premiums to be paid out of the general funds of the Association; and such other employees of the Office of the Secretary, who handle funds of the Association, shall be bonded in the sum of $5,000, each, premiums to be paid out of the general funds of the Association.

1811. FAILURE TO CHECK TRADES.—If any member, firm, or corporation is unable with diligent effort to check any future delivery transaction made with another member, firm, or corporation, then such transaction shall be closed out for the account of whom it may concern by the member, firm, or corporation claiming the contract not later than the close of trading hours of the next business day in order to establish any claim for loss because of such failure to check by the other party to the contract.

1812. GRATUITIES.—No member of the Association shall employ any employee of the Association or of the Clearing House, for any service outside the hours of regular employment by the Association or such corporation, without having first obtained the approval therefor of the Secretary or of said Clearing House, as the case may be, and registering therewith the name of said employee, the nature of the services rendered, and the amount of said compensation.

No member shall give any compensation or gratuity to an employee of the Association or to an employee of another member of the Association unless the giving of such compensation or gratuity be first submitted in writing to the Secretary and approved. No member shall give any compensation or gratuity to an employee of the Clearing House un-

less the giving of such compensation or gratuity be first submitted in writing to the Clearing House and approved.

Employees of the Association are forbidden to accept any compensation or gratuity from any member of the Association for any service rendered or to be rendered except when said compensation or gratuity has been approved by the Secretary.

†1815. INSOLVENCY.—When the Business Conduct Committee, from any preliminary investigations or otherwise, has reason to suspect that any member of the Association is threatened with insolvency, it shall co-operate with such member, in any feasible manner not contrary to the Rules and Regulations of the Association, to save such member from open and judicial bankruptcy. When this is not practicable, the Committee shall then take such other action as will in its judgment assist in securing a prompt, efficient, and economic administration of the member's assets for the bankrupt, as well as for the members of the Association and customers of such bankrupt, who are creditors. Nothing herein, however, shall authorize such Committee to bind the Association to any pecuniary obligation.

‡1816. VERBAL CHECKING OF TRADES.—It is required that the buyer and seller of securities or commodities verbally reconcile such transactions, this reconcilement to be completed within fifteen minutes after each transaction.

*1817. PROFESSIONAL COUNSEL.—Any member who persistently solicits the right to represent other members as counsel in any investigation or hearing before the Board or any standing or special committee, or any licensed attorney who acquires membership for the purpose of representing

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†Amended November 17, 1936.
‡Adopted October 1, 1929.
*Adopted February 14, 1933

any member in any such investigation, shall be regarded as professional counsel under Rule 160.

§1819. NON-MEMBER'S ACCOUNTS.—A non-clearing member may receive from a clearing member half of the commissions paid by a non-member to the clearing member for the execution of such orders as are turned over to the clearing member by the non-clearing member under the provisions of Rule 222 only when the non-clearing member and the clearing member jointly notify the Secretary in writing that such an arrangement has been entered into and is mutually satisfactory.

*1820-A. DISCRETIONARY ACCOUNTS AND JOINT ACCOUNTS.—It shall be deemed unbusinesslike, detrimental to the welfare of the Association, and inconsistent with just and equitable principles of trade under Rules 145 and 146 for any member, registered partnership, or registered corporation—

1. To accept or carry an account where the person or organization in whose name the account is held is known to be acting for and on behalf of others unless such person or organization is registered with the Secretary of Agriculture as a futures commission merchant;

2. To accept or carry the account of a person, who has given trading authority to an individual or organization, without obtaining two copies of the following letter signed by the person in whose name the account is held—(one copy to be mailed to the Market Report Committee; the other copy to be retained in the files of the member);

3. To accept or carry a joint account without obtaining two copies of the following letter signed by each party to the agreement—(one copy to be mailed to the Market Report Committee; the other copy to be retained in the files of the member):

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§Adopted May 16, 1933.

*Adopted June 21, 1938. Amended September 20, 1938. See Rule 151. (Regulation 1820 Discretionary Accounts rescinded June 21, 1938.)

_____
Name of Member Carrying Account

_____
Address

_____(Date)

Gentlemen:

I understand that an employee of a member of the Chicago Board of Trade is not permitted to accept discretionary orders to be executed on that exchange.

I further understand that the Chicago Board of Trade has no jurisdiction over a non-member who is not employed by one of its members, and that if I give to such non-member (individual or organization) authority to exercise any of my rights over my account, I do so at my own risk.

However, I have carefully examined the provisions of the power of attorney or trading authority which I have issued to

_____ _____
Name Address

or joint account agreement which I have entered into with

_____ _____
Name Address

and understand fully the obligations which I have assumed by this action.

I have thoroughly investigated the honesty and integrity of the individual or organization named above.

I understand that your firm is in no way responsible for any loss to me occasioned by the acts of the individual or organization named above and that your firm does not, by implication or otherwise, endorse the operating methods of such individual or organization.

_____
Signature of Customer.

4. To accept or carry an account under the provisions of this regulation unless the member

(a) requires that each transaction made for such account be specifically designated as such at the time the order is accepted; and

(b) sends *direct to the customer* a written confirmation of each trade as provided in Rule 207; and

(c) refuses to hold open any transactions in the ac-

count which can be closed by making up an account purchase and sale; and

(d) sends *direct to the customer* a monthly statement showing the exact position of the account, including all open trades figured to the market.

The letter from the customer prescribed by this regulation need not be obtained when both parties referred to in either section 2 or 3 are members of the same family, or when the account is handled directly at the discretion of a member, or a partner of a registered firm, or an officer of a registered corporation.

The provisions of this regulation relate only to transactions executed on this Exchange.

*1821.—Margin Requirements on Cotton.—

1. Initial margins required from all customers on cotton futures transactions (except on hedging and spreading transactions) shall be the Clearing House requirements as a minimum.

2. On hedging and spreading transactions, a member may extend to any one customer credits up to $2.50 a bale but not in excess of $5,000. Such credits shall be revocable by the member at any time. For the purpose of this paragraph, spreading transactions are defined to mean purchases of futures in one market or delivery month offset simultaneously by sales in similar amounts of futures in the same or in another market or delivery month and, conversely, sales of futures in one market or delivery month offset simultaneously by purchases in similar amounts of futures in the same or in another market or delivery month. Hedging transactions are defined in Paragraph 3 of Section 4(a) of the Commodity Exchange Act.

3. A clearing member may carry cotton futures contracts for a member correspondent without initial margins—but only to the extent that such contracts are those of customers of the member correspondent. This exemption does not apply to contracts of the member correspondent, its partners or officers.

*Adopted December 14, 1937; effective January 1, 1938; amended September 20, 1939.

4. A clearing member may carry a net position of not more than 250 bales without margin for a non-clearing member, who operates under Section (e) and (f) of Rule 221 and who gives all his cotton trades to one clearing member.

5. The Provisions of Sections 2, 3, 4, 5, 6, 7 and 8 of Regulation 1822 also apply to cotton futures transactions.

†1822.—MARGIN REQUIREMENTS ON GRAIN AND PROVISIONS.—

**1. Initial margins required from all customers, whether members or non-members, on all open trades in provisions shall be the minimum margin requirements of the Clearing House, provided, however, in order to facilitate business and minimize the labor of calling margins, members may, in their discretion, carry for any one customer an open interest not in excess of 20 contracts of provisions, provided that this open interest is kept to the market at all times. All amounts in excess of the above mentioned quantities of provisions must be margined upon the basis of the prevailing Clearing House requirements as a minimum.

2. Clearing members may carry contracts for future delivery of grain for member correspondents on the basis of Clearing House margin requirements—but only to the extent that such contracts are those of customers of the member correspondents.

3. If stocks, bonds or similar collateral are deposited specifically to secure commodity transactions which are executed on this Exchange, not more than 75 per cent of the market value of such securities may be considered as margin to such transactions, provided, however, that when direct obligations of or obligations guaranteed as to principal by the United States are thus deposited, either the par or market value thereof (whichever is lower) may be considered as margin. Not less than the Chicago or New York bank rate of interest on collateral loans shall be charged on the dollar amount required under these rulings.

†Adopted June 5, 1934; amended June 19, 1934; amended July 10, 1934; amended July 17, 1934; amended October 30, 1934; amended December 18, 1934; amended April 16, 1935; amended October 15, 1935, September 20, 1939, February 25, 1941 and May 26, 1942.

**Amended December 14, 1937; effective January 1, 1938.

4. If foreign currencies are deposited with a member, the deposits must be calculated so that at the current rate of exchange the dollar equivalents of the foreign currencies properly meet the margins required by Rule 210 and Regulation 1822-A. Foreign currencies may be made available to members in the form of irrevocable clean credits.

5. Members are not permitted to pay to customers interest on minimum margins deposited under these rulings.

6. In computing minimum margin requirements for any customer, equities or impairment resulting from change in market prices shall be regarded as money equivalents.

7. No member shall extend any credit or give any rebate or gratuity of any kind to any person for the purpose of circumventing or evading minimum margin requirements.

8. It shall be incumbent upon each member to require satisfactory evidence that all hedging and spreading trades are bona fide spreading or hedging trades, as the case may be.

A letter from a customer stating that a particular transaction is a hedge or a spread will be considered "satisfactory evidence" under this ruling unless there is reason to suspect otherwise.

10. When a correspondent member's account with the Clearing House member consists of trades which are spreading trades, such account may be carried as a spreading account by the clearing member.

11. It shall be incumbent upon each member financing purchases of cash grain for country elevator customers to require satisfactory evidence that funds so loaned are not used to margin future contracts in grain.

12. Members shall not accept orders for new grain trades from a customer, unless the minimum initial margin on the new trades is deposited and unless the margin on old commitments in the account equals or exceeds the initial requirements on hedging and spreading trades and/or the maintenance requirements specified in Regulation 1822-A on all other trades. If the customer has a credit in excess of the initial margin requirements on all old commitments in his account, this may be used as part or all of the initial margins required

on new commitments. However, credits in excess of maintenance margins and less than initial margin requirements may not be used. When a customer states that funds required to fully margin his account are being transmitted at once, the member may consider this assurance in lieu of cash for a reasonable period.

13. No customer shall be permitted to make withdrawals from an account when the margin therein is less than the minimum initial margin specified in Regulation 1822-A, or when the withdrawals would impair such minimum requirements.

14. No member may carry for a customer hedging or spreading transactions in grain when the customer's account, figured to the market, would result in a deficit. Minimum maintenance margins required on other transactions in grain are specified in Regulation 1822-A. The failure of a member to close the customer's account before it results in such deficit or undermargined condition shall not relieve the customer of any liability to the member, nor shall such failure on the part of a member amount to an extension of credit to the customer if the member in the exercise of reasonable care has been unable to close the account without incurring such deficit or undermargined condition.

*15. A member may use his discretion in permitting a customer having an established account to trade during any day without margining each transaction, provided the net position resulting from the day's trading is margined as required by Rule 210 and Regulations 1822 and 1822-A.

**16. When a customer switches an open interest in the same grain from one future to another and the orders for the purchase and sale are placed simultaneously, no additional margins need be required by his commission merchant because of such switch. However, if such orders are not placed simultaneously, the new position should be margined on the basis of minimum initial margin requirements.

*Adopted October 8, 1940.
**Adopted March 8, 1944.

**1822-A.—Under the provisions of Rule 210 the Board hereby fixes the following minimum initial margins on grain futures transactions, other than hedging or spreading transactions:

25 cents per bushel on soybeans,
10 cents per bushel on wheat, rye and barley,
8 cents per bushel on corn,
6 cents per bushel on oats,

The Board further orders that margins on all commitments in grain futures (other than hedging or spreading transactions) shall be maintained at the following as a minimum:

16 cents per bushel on soybeans,
6 cents per bushel on wheat, rye and barley,
4 cents per bushel on corn,
3 cents per bushel on oats,

"On spreading transactions in the same grain on this Exchange, no initial margin is required. On spreading transactions between different grains on this Exchange and on inter-market spreading transactions, the minimum initial margin shall be

16 cents per bushel on soybeans,
6 cents per bushel on wheat and rye,
5 cents per bushel on barley,
4 cents per bushel on corn,
3 cents per bushel on oats,

On hedging transactions, the initial margin shall be the Clearing House requirements as a minimum."

‡1823. TRADING LIMITS.—(See Regulation 1823-A)

*1823-A. TRADING LIMITS.—In a patriotic compliance with the request of the Secretary of Agriculture, the Directors acting under the provisions of Rule 251 have ordered that beginning Saturday, November 8, 1941, and continuing until

**Adopted September 15, 1939; amended October 10, 1939; February 25, 1941; May 15, 1941; September 9, 1941.

‡Adopted October 15, 1935; amended August 31, 1936, September 22, 1936, and September 5 and 6, 1939; rescinded February 29, 1944.

*Adopted Nov. 8, 1941.

further notice the daily trading limits specified in Regulation 1823 are changed to read as follows:

Wheat, corn, oats, rye, and barley	5c per bushel
Soybeans	6c per bushel
Cotton	1c per pound
Lard	$1.00 per hundred lbs.
Dry Salt Meats	$1.00 per hundred lbs.

‡1825. CONSTRUCTION OF RULES 211 AND 212.—A customer's wholly owned securities and/or excess collateral (securities in excess of the approximate amount required to enable the member carrying the account to finance it) must be segregated in a manner which clearly identifies their ownership. The member carrying the account shall keep a record of the location of such segregated securities and the means by which their ownership may be identified. When such securities are in the custody of another broker, the member carrying the account shall keep such other broker fully informed at all times as to the specific securities to be segregated. This regulation applies to both odd lots and round lots.

**1826. HOURS FOR TRADING IN COTTON AND SECURITIES.—The hours for trading for future delivery in cotton and for trading in securities shall be from 9 A. M. to 2 P. M. except on Saturdays when the hours shall be from 9 A. M. to 11 A. M.

††1828. THE GRAIN FUTURES ACT (U. S. C. 1934 edition, Title 7, Secs. 1-17) as amended by the act of June 15, 1936 (Public. No. 675, 74th Congress) may be cited as the Commodity Exchange Act and Rule 603 shall be so read.

†1829. In compliance with Section 5a, sub-paragraph (7) of the Commodity Exchange Act, receipts for grain stored in the following grain elevators licensed under the United States Warehouse Act of August 11, 1916, as amended will be deliverable in satisfaction of futures contracts:

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‡Adopted September 13, 1938.

**Adopted September 1, 1936; amended November 10, 1936. See Rule 505.

††Adopted September 8, 1936.

†Adopted September 9, 1936; amended July 13, 1937; amended September 6, 1938; July 11, 1939; August 1, 1939; amended March 26, 1940; Amended August 12, 1941; Amended October 6, 1942.

Wabash Elevator operated by Norris Grain Company, Chicago & Northwestern Terminal Elevator & Annex operated by Cargill, Inc., Rock Island Terminal Elevators C and D operated by Continental Grain Co., National Elevator, operated by Great Lakes Elevator Corporation, Calumet Elevator operated by Rosenbaum Brothers, Inc., Santa Fe Elevator operated by Santa Fe Elevator Corporation, and Rialto Elevator operated by General Mills, Inc. Star Grain Division.

*1830 and 1831 (Old and new corn contracts in 1937).

†1832. FINAL SEVEN DAYS OF DELIVERY MONTH.

WHEREAS, the Board of Trade of the City of Chicago is a contract market licensed under the Commodity Exchange Act; and

WHEREAS, under Rule 603 and Regulation 1828 members are required to comply with all lawful provisions of the Commodity Exchange Act and Regulations thereunder lawfully promulgated by the Secretary of Agriculture; and

WHEREAS, the Secretary of Agriculture on February 17, 1938, issued an order pursuant to the provisions of Section 5 (a) (4) of the Commodity Exchange Act requiring a period of seven business days during which contracts for future delivery in the current delivery month of wheat, corn, oats, barley, rye or flax seed may be settled by delivery of the actual cash commodity after trading in such contracts has ceased for each delivery month after May, 1938, on all contract markets on which there is a trading in futures in any of such commodities; and

WHEREAS, contracts for future delivery of such grain in July and September have been entered into; and

WHEREAS, under the present Rule 259a no trade in such grain futures deliverable in the current month shall be made during the last three business days of that month; and

WHEREAS, in view of said regulation of the Secretary of Agriculture, under Rule 251 an emergency exists as to such

*Adopted December 22, 1936. Rescinded February 29, 1944.
†Adopted February 23, 1938.

contracts as have already been entered into for future delivery of such grains during the delivery months following May 1938;

NOW, THEREFORE, BE IT RESOLVED, that after May 1938, no trades in such grain futures deliverable in the current month shall be made during the last seven business days of that month, and such contracts may be settled by delivery of the actual cash commodity after trading in such contracts has ceased, and if not previously delivered delivery must be made upon the last business day of the month; and

BE IT FURTHER RESOLVED that contracts for future delivery in the delivery months following May 1938, of wheat, corn, oats, barley, rye or flax seed heretofore entered into and hereafter entered into shall not be traded in during the last seven business days of said months, and Rule 259a shall after the delivery month of May 1938, be interpreted to conform to the regulation of the Secretary of Agriculture filed on February 17, 1938.

*1832-A. (Effective on all soy bean contracts for delivery after October, 1938).—No trades in soy bean futures deliverable in the current month shall be made during the last seven business days of that month and such contracts may be settled by delivery after trading in such contracts has ceased; and, if not previously delivered, delivery must be made upon the last business day of the month.

**1832-B.—No trades in Dry Salt Clear Belly Futures deliverable in the current month shall be made after the 20th day of the month. Trading for cash in the pit on 60 to 90-day Bellies which have been delivered may continue up to and including the last business day of the current month. Inspection certificate required by Rule 401 shall designate the number of days in which the Bellies have been in cure.

***1833. Interpreting Rule 221.—Trades which are opened and closed on the same day at the same price by a non-clearing member operating under Section (e) of Rule 221 may not

*Adopted March 15, 1938.
**Adopted December 6, 1939.
***Adopted June 7, 1938, effective July 1, 1938.

be transferred, and the minimum clearing rates which must be charged on such trades by the clearing member shall be 1 cent per 1,000 bushels of grain in lots of 5,000 bushels or more, 2 cents per 1,000 bushels of grain in lots of less than 5,000 bushels, 5 cents per lot of lard or meats and 5 cents per 50 bales of cotton.

†1834. CONSTRUCTION OF RULE 109.

††1835. MEMBER UNDER INVESTIGATION.—No member may sell his membership privilege, unless the approval of the Board is first secured, when he is under investigation by a special committee appointed under the provisions of Rule 156 or by the Business Conduct Committee; or when charges are preferred against him; or when he is under suspension for causes other than default, insolvency or non-payment of assessments.

*1836. Interpreting Rules 232(a) and 233.—When a member or non-member receives grain on delivery in satisfaction of a futures contract and orders his commission merchant or warehouseman to ship such grain to a destination outside the Chicago District, the charges shall be made as prescribed in these rules.

The commission chargeable on the futures contracts involved may be absorbed in charges prescribed in Rules 232(a) and 233.

No member shall knowingly become a party (either as principal or agent) to any arrangement that will permit the party taking delivery to evade these commission charges by selling the grain and repurchasing it for shipment.

**1837. TRADING IN LARD DURING THE DELIVERY MONTH.—No trades in lard futures deliverable in the current month shall be made during the last seven business days of that month, and such contracts may be settled by delivery after trading in such contracts has ceased and if not previously

†Adopted November 7, 1939; rescinded May 26, 1942.
††Adopted June 4, 1940.
*Adopted September 10, 1940.
**Adopted October 22, 1940 to become effective after November 30, 1940.

delivered, delivery must be made upon the last business day of the month.

†1838. RYE AND OATS DIFFERENTIALS (in 1941).

*1839. MARKETING PENALTIES.—Members, registered partnerships or registered corporations selling on the Floor of the Exchange carlots, barge loads, truck lots, vessel lots or lots covered by warehouse receipts of grain subject to marketing penalties, shall guarantee the buyer that such grain is free of liability for penalty payments and shall place upon the invoice a notation to this effect. Where car lots or warehouse receipts are tendered for delivery on future contracts for grain subject to marketing penalties the party making delivery shall guarantee the buyer that such grain is free of liability for penalty payments and shall place upon the delivery notice a notation to this effect."

‡1840. TRADING IN "OLD" AND "NEW" RYE CONTRACTS (1941).

‡1841 and 1842. SOY BEAN CONTRACTS, OCTOBER (1941).

**1843. FLOOR PRACTICES. (Effective August 1, 1942).—The following acts are detrimental to the welfare of the Association (Rule 145):

(a) for a member to disclose an order at any time, or to divulge, trade against, or take the other side of, for any purpose, any order revealed to him by reason of his relationship with the principal;

(b) to take into one's own account trades made on orders that have failed to check. Where a trade fails to check and the broker has reported it in good faith to the clearing member and the execution of the trade has been reported to the customer as having been consummated, the broker may make a trade openly and competitively in the pit, clearing it through the clearing member, and the clearing member shall notify the customer of the facts and confirm such trade, making a monetary adjustment to the customer for the account of the broker at the price at which it was reported by a debit or credit to the customer, provided that complete notation is made on the

†Adopted February 25, 1941; rescinded February 29, 1944.
*Adopted June 3, 1941; amended August 19, 1941.
‡Adopted June 5, 1941; rescinded February 29, 1944.
**Adopted July 21, 1942.

trading card covering the identity of the trade, and the transaction is approved by the Floor Practices Committee. The clearing member must promptly report the entire transaction to the Secretary's office, certifying that the broker's card is on file in the clearing member's office and that adjustment with the customer has been made;

(c) for a member to withhold from the open market any order or any part of an order for the convenience of another member;

(d) for a member to execute any order after the closing bell is sounded;

(e) to buy and sell as an accommodation at any time; to use one order to fill another order, or any part thereof; to buy and sell simultaneously at the same price by pre-arrangement; continuous trading between brokers acting for the same principal raises the presumption that such trading was not inadvertent;

(f) for a broker to buy for his own account when he has in hand orders to buy for others at the market or at the same price; for a broker to sell for his own account when the broker has in hand orders to sell for others at the market or at the same price;

(g) for parties to a transaction (and only such parties) to fail to see immediately that the pit recorder has made proper record of the price at which trades have been consummated.

†1844. Dues of Members in Military Service. In accordance with the authority granted the Board under the provisions of Rule 108-B no assessment of a member shall be remitted under Rule 108-B except under the following conditions:

1. Each petition for the benefits of Rule 108-B will be considered on its merits.

2. No petition will be considered unless accompanied with funds sufficient to pay all dues up to and including the full month in which the Board acts on the request.

3. No petition will be approved unless the petitioner became a member of the Association prior to December 8, 1941.

†Adopted October 27, 1942.

4. When a petition is granted the member is required to notify the Secretary promptly of the termination of his military service.

*1845. CONFIRMATIONS (Construction of Rule 207).—A confirmation of a commission merchant to the customer need not contain the name of the other party to the contract, provided the confirmation has prominently printed or stamped thereon the words, "Name of other party to contract furnished on request."

**1846.—TRADING IN COTTONSEED OIL SUSPENDED.—Inasmuch as the Office of Price Administration has placed two different maximum prices on contract grade cottonseed oil, depending upon its uses, and

Whereas the Directors have found that an emergency exists with respect to trading in contracts for cottonseed oil for future delivery,

Now therefore, the Directors, acting under the provisions of Rule 251 have ordered that until further notice, no contracts for the future delivery of cottonseed oil may be entered into under the Rules of this Exchange.

***1847. LARD DELIVERIES IN DECEMBER, 1942.

****1848 AND 1849. CEILING PRICES ON CORN.

†1850. LARD DELIVERIES IN JANUARY, 1943.

††1851. CEILING PRICES ON CORN. (See Regulation 1877-A)

†††1852. SOYBEAN TRADING SUSPENDED.—INASMUCH AS the Secretary of Agriculture under date of February 17, issued (C.C.C. Order No. 3) certain restrictions on soybean purchases under Executive Order No. 9280 (published Federal Register, Thursday, February 18, 1943, pp. 2143-4).

AND INASMUCH AS sub-paragraph (c) of said Order provides that "no person other than a processor, manufacturer or

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*Adopted October 27, 1942.
**Adopted November 24, 1942.
***Adopted December 8, 1942; rescinded February 29, 1944.
****Adopted January 12, 1943; rescinded February 3, 1943.
†Adopted January 12, 1943; rescinded February 29, 1944.
††Adopted February 2, 1943; rescinded March 13, 1943.
†††Adopted 9 A. M. on February 20, 1943.

seed dealer shall purchase or accept delivery of soybeans of the 1942 crop"

THEREFORE the Board has found that an emergency exists and under the provisions of Rule 251 orders, until further notice,

(1) that no new contracts in soybean futures shall be entered into, and

(2) all outstanding contracts in soybean futures at the close of business on Friday, February 19, 1943, shall be settled through the Clearing House on or before the close of business Wednesday, February 24, 1943 on the basis of the Clearing House settlement prices of Friday, February 19, 1943, namely:

Soybeans for delivery in May, 1943 ..... $1.82¼
Soybeans for delivery in July, 1943 ..... 1.84
Soybeans for delivery in October, 1943 ... 1.82½

*1853. CEILING PRICES ON CORN.

†1854. SETTLEMENT OF MAY, JULY AND SEPTEMBER CORN FUTURES CONTRACTS. — WHEREAS the Associate War Food Administrator has requested that the Board of Trade of the City of Chicago use all means to free the commercial stocks of corn now frozen.

AND WHEREAS the Associated War Food Administrator has suggested that all corn futures contracts outstanding on the last seven business days of the delivery months of May, July, and September 1943, be settled either by the delivery of corn or at a settlement price of $1.07,

AND WHEREAS an emergency exists, the Board of Directors, acting under the provisions of Rule 251 hereby orders, until further notice,

THAT all contracts in corn futures for delivery in May 1943, July 1943 or September 1943 which are outstanding and respectively mature during the last seven business days of each

*Adopted March 13, 1943; amended March 23, 1943; April 13, 1943 and June 1, 1943; rescinded December 4, 1943.

†Adopted May 18, 1943; rescinded February 27, 1945.

of these delivery months may be settled either by the delivery of corn or at the settlement price of $1.07 per bushel, and further orders,

THAT during the life of the May 1943, July 1943 or September 1943 corn futures contracts, hedgers who have sold futures against their stocks of corn may buy in their future contracts at prices not higher than $1.07 per bushel provided that they can find "longs" who are willing to sell futures in exchange for cash at this price level. Such transactions, when made, shall be reported on the ticker as "in exchange for cash corn."

*1855. LIQUIDATION OF CASH CORN HEDGED IN JULY AND SEPTEMBER 1943 FUTURES. — WHEREAS, the Associate War Food Administrator has telegraphed the President of this Association that Regulation 1854 adopted by the Board of Directors on May 18 has been helpful in securing liquidation of stocks of corn;

AND WHEREAS, the Associate War Food Administrator has telegraphed the President of this Association that he has information which indicates there is still a substantial volume of cash corn held by hedgers who have sold futures against their stocks of corn;

AND WHEREAS, the Associate War Food Administrator has requested that the Board of Trade of the City of Chicago take such means as its Board of Directors best determine will assist in prompt liquidation of said stocks of cash corn held by hedgers who as price insurance have sold future contracts against said stocks of cash corn;

AND WHEREAS, the Associate War Food Administrator has notified the Board of Directors that the following Regulation will, in his opinion, assist in further liquidation of stocks of cash corn, and that the following Regulation has been approved by the Office of Price Administration as not in conflict with Revised Maximum Price Regulations 346 (corn);

AND WHEREAS, the Board of Directors patriotically cooperates within its legal limitations with the War Food Admin-

*Effective June 14, 1943.

istration in its request to expediate the War Food Production Program;

AND WHEREAS, an emergency exists because of these circumstances, the Directors acting under the provisions of Rule 251, order, until further notice THAT

1. The owners of cash corn who have secured price hedging protection for their cash corn through the sale of July and/or September 1943 corn futures on this "contract market" may place with commission merchants orders to buy in such future contracts at prices not to exceed the maximum price of No. 2 yellow corn at Chicago ($1.07), *Provided* THAT

(a) they file with the commission merchant at the time such orders are placed a statement that they have sold or will immediately sell an equal quantity of corn from their stocks against the hedges on which they have placed orders to buy at $1.07, and THAT

(b) the commission merchant receiving such order shall transmit the order to the Floor of the Exchange for execution, marking the same "Purchase on Deferred Basis," and THAT

(c) when such order is received by the floor broker it may be executed with anyone who is willing to sell any part of the quantity of the futures so bid for at $1.07 on a deferred basis.

2. When executed, such order shall be cleared through the Clearing Corporation on separate clearing reports and adjustment shall be made by the Clearing Corporation to its clearing members at the close of business on the day the order is executed on the basis of $1.05 per bushel. The balance of the adjustment (between $1.05 and $1.07) shall be paid to or credited by the Clearing Corporation at once, and shall be adjusted by the Clearing Corporation to its clearing members for the account of their customers during the last seven business days of July or the last seven business days of September, 1943, and

3. All orders so executed shall be recorded on the ticker and by the commission merchant as "Deferred" in order to differentiate same from other orders that are executed on the Floor of the Exchange.

*1856. LIQUIDATION OF OUTSTANDING 1943 CORN FUTURES CONTRACTS.—WHEREAS the War Food Administrator has declared that an emergency now exists with respect to the shortage of corn and has requested that all contract markets terminate trading in the current futures contracts for the delivery of corn in 1943 and has requested that settlement of outstanding futures contracts so terminated be made on the basis of $1.07 per bushel for the July and September 1943 contracts, and on the basis of $1.01 per bushel for the December 1943 contracts as authorized by the Office of Price Administration,

AND WHEREAS, the War Food Administrator is requisitioning stocks of corn in terminal and sub-terminal elevators,

AND WHEREAS, an emergency exists because of such request and such requisitioning of corn stocks, the Directors, acting under the provisions of Rule 251 order

1. THAT all future contracts calling for the delivery of corn in July, September or December 1943 outstanding at the close of business Friday, June 25, 1943, be settled at the settlement prices designated by the War Food Administrator, namely, $1.07 per bushel for July 1943 contracts, $1.07 per bushel for September 1943 contracts, and $1.01 per bushel for December 1943 contracts,

2. THAT commission merchants and the Clearing Corporation proceed immediately with such settlement of all contracts which were outstanding at the close of business Friday, June 25, 1943,

3. THAT the Clearing Corporation adjust immediately to its clearing members for the account of their customers all deferred credits or moneys now held by the Corporation in pursuance of Regulation 1855,

*Adopted June 25, 1943.

4. THAT until further notice there be no trading in future contracts calling for the delivery of corn in July, September or December 1943, and

5. THAT due notice be given to the membership by the Directors when and under what conditions new futures contracts may be entered into calling for the delivery of corn in 1943.

*1857. WEIGHING, INSPECTION AND INTEREST CHARGES ON CORN.

WHEREAS certain orders have been issued by Commodity Credit Corporation to increase the movement of corn to war industries, and

WHEREAS these orders have altered the traditional trade customs in handling corn and have interfered with the normal movement of corn, and

WHEREAS an emergency exists because thereof, the Board of Directors, acting under the provisions of Rule 251, orders, until further notice

THAT any buyer of corn may, if he so elects, pay the weighing, inspection and interest charges on corn bought to arrive or consigned to this market.

†1858. BIDS FOR COMMODITIES.—It is conduct inconsistent with just and equitable principles of trade for a member to bid or contract for any commodity when the bid, or contract, is made with a promise that the buyer will guarantee the seller benefits of any advance in price or against loss occasioned by decline in price.

**1859. MAXIMUM PRICES FOR CORN.—Whereas, the Office of Price Administration is about to issue amendments to the Revised Maximum Price Regulation 346 (corn)

And Whereas, such amendments will create an emergency, the Directors, acting under the provisions of Rule 251, order, until further notice

*Adopted July 30, 1943.
†Adopted September 14, 1943.
**Adopted December 4, 1943.

1. That on the effective date of such amendment, Regulation 1853 as amended is hereby rescinded.
2. The maximum price for transactions in corn futures or cash corn entered into under the Rules of this Association on and after the effective date of such amendment shall conform to the maximum prices specified in the order of the Office of Price Administration.

*1860. MAXIMUM PRICES FOR BARLEY.—Whereas, the Office of Price Administration is about to issue a price regulation setting the maximum prices for barley

And Whereas, this order will create an emergency, the Directors, acting under the provisions of Rule 251, order, until further notice

The maximum prices on transactions in barley futures or cash barley entered into under the Rules of this Association on and after the effective date of the maximum price regulation issued by the Office of Price Administration shall conform to the prices prescribed in such order and amendments thereto.

*1861. MAXIMUM PRICES FOR OATS.—Whereas, the Office of Price Administration is about to issue a price regulation setting the maximum prices for oats

And Whereas, this order will create an emergency, the Directors, acting under the provisions of Rule 251, order, until further notice

The maximum prices on transactions in oats futures or cash oats entered into under the Rules of this Association on and after the effective date of the maximum price regulation issued by the Office of Price Administration shall conform to the prices prescribed in such order and amendments thereto.

*1862. TRADING IN CORN FUTURES.—Until notice is given to the membership by the Board when and under what conditions new futures contracts calling for the delivery of corn

*Adopted December 4, 1943.

may be entered into, there shall be no trading in such future contracts.

*1863. SETTLEMENT OF DECEMBER 1943 OATS CONTRACTS.—WHEREAS, the Office of Price Administration issued Temporary Maximum Price Regulation 33, effective December 6, 1943,

AND WHEREAS, said Regulation prescribes maximum prices on oats which have interfered with the normal movement of oats into this market so that it appears to be impossible to procure cash oats for the purpose of making delivery on December 1943 futures contracts,

AND WHEREAS, the unprecedented demand for all feed grains arising from the war food program has caused farmers generally to delay shipment of oats to markets,

AND WHEREAS, there have been failures to tender to the Clearing Corporation notices of intention to deliver oats on December 1943 futures contracts as prescribed by the Rules,

AND WHEREAS, an emergency exists because of this situation, the Directors, acting under the provisions of Rule 251, order,

(1) That all futures contracts calling for the delivery of oats in December 1943 outstanding at the close of business Thursday, December 30, 1943, and on which notices of intention to deliver were not delivered to the Clearing Corporation before 1:45 P. M. Thursday, December 30, 1943, must be settled at the maximum ceiling price for oats futures under the Temporary Maximum Price Regulation, namely, 82 cents per bushel, and

(2) That commission merchants and the Clearing Corporation make settlement of all such contracts on Friday, December 31, 1943.

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*Adopted December 30, 1943.

†1864. TEMPORARY MAXIMUM PRICE ON WHEAT FUTURES.—WHEREAS, the Office of Price Administration has today issued a Revised Maximum Price Regulation on wheat, which is effective today,

AND WHEREAS, such Regulation is not available in Chicago and consequently the Directors have not had opportunity to study its provisions,

AND WHEREAS, an emergency exists because of this situation, the Directors, acting under provisions of Rule 251, order until further notice, and more information can be had,

(1) That, on and after the opening of trading Wednesday, January 5, 1944, no contract calling for the future delivery of wheat may be traded in at prices higher than $1.71⅜ per bushel.

*1864-A. WAR TIME GRADES DELIVERABLE ON AND MAXIMUM PRICES FOR WHEAT FUTURES CONTRACTS.

WHEREAS, the Office of Price Administration has issued Revised Maximum Price Regulation 487 (wheat) effective January 4, 1944, and

WHEREAS, the said R.M.P.R. 487 arbitrarily establishes prices for different grades of wheat not in conformity with normal trade practices, and

WHEREAS, the said R.M.P.R. 487 does not establish maximum prices for wheat futures contracts but leaves the determination of such maximum prices to the various Exchanges to act in accordance with their own Rules and the provisions of said price Regulation, and

WHEREAS, war time conditions have necessarily supplanted peace time conditions and price relationships affecting the marketing of wheat, and

WHEREAS, the Directors believe all members to be heartily in favor of a patriotic adjustment of peace time Rules to war time necessities, and

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†Adopted January 4, 1944. Rescinded January 8, 1944 by Regulation 1864-A.

*Adopted January 8, 1944.

WHEREAS, an emergency exists because of these circumstances, the Directors, acting under the provisions of Rule 251, order as a war time measure, and until further notice:

1. That, the paragraph in Rule 292 prescribing differentials for different grades and types of wheat be temporarily set aside and the following be substituted in lieu thereof as applicable on all contracts now open or to be created.

WHEAT DIFFERENTIALS.

No. 1—Heavy Dark Northern Spring Wheat No. 1—Heavy Northern Spring Wheat No. 1—Dark Hard Winter Wheat No. 1—Hard Winter Wheat No. 1—Yellow Hard Winter Wheat No. 1—Red Winter Wheat	At 1 cent per bushel over contract price.
No. 1—Northern Spring Wheat No. 1—Dark Northern Spring Wheat No. 2—Hard Winter Wheat No. 2—Dark Hard Winter Wheat No. 2—Yellow Hard Winter Wheat No. 2—Red Winter Wheat	At contract price.

(It will be incumbent upon the party making delivery of wheat on futures contracts to see that such delivery complies with R.M.P.R. 487.)

2. That, if on delivery the party making delivery delivers wheat which has incurred charges in addition to the 3 cents allowed for in the maximum futures price, he may bill and the party taking delivery must pay such additional charges but not to exceed one merchandising charge of 1½ cents per bushel and/or one elevation charge of 1 cent per bushel.

3. That, on and after the opening of trading Monday, January 10, 1944, no contract calling for the future delivery of wheat may be traded in at prices higher than $1.73⅜ per bushel.

4. That, Regulation 1864, adopted January 4, 1944, be and it hereby is rescinded as of the opening of business Monday, January 10, 1944.

Miscellaneous Regulations

NEW REGULATION—1864-B.
(To be inserted in Rule Book)

On June 27, 1944 the Directors adopted the following Regulation:

1864-B. WAR-TIME GRADES DELIVERABLE ON AND MAXIMUM PRICES FOR WHEAT FUTURES CONTRACTS.

WHEREAS, the Office of Price Administration issued Revised Maximum Price Regulation 487 (Wheat) effective January 4, 1944, and,

WHEREAS, the said R.M.P.R. 487 arbitrarily establishes prices for different grades of wheat not in conformity with normal trade practices, and

WHEREAS, the said R.M.P.R. 487 does not establish maximum prices for wheat futures contracts but leaves the determination of such maximum prices to the various Exchanges to act in accordance with their own Rules and the provisions of said price Regulation, and

WHEREAS, war-time conditions have necessarily supplanted peace-time conditions and price relationships affecting the marketing of wheat, and

WHEREAS, the Directors believe all members to be heartily in favor of a patriotic adjustment of peace-time rules to war-time necessities, and

WHEREAS, Regulation 1864-A was adopted on January 8, 1944, soon after the Office of Price Administration issued Revised Maximum Price Regulation 487, and

WHEREAS, an emergency existed at the time of the adoption of Regulation 1864-A and continues to exist at this time but under conditions which have changed,

NOW, THEREFORE, the Directors, acting under the provisions of Rule 251, as an emergency measure, effective Thursday, June 29, 1944, and until further notice, order:

1. That Regulation 1864-A, adopted January 8, 1944, be

and hereby is rescinded, and this Regulation 1864-B is substituted in lieu thereof,

2. That, the paragraph in Rule 292 prescribing differentials for different grades and types of wheat be temporarily set aside and the following be substituted and continued in lieu thereof as applicable on all contracts now open or to be created.

WHEAT DIFFERENTIALS.

No. 1—Heavy Dark Northern Spring Wheat No. 1—Heavy Northern Spring Wheat No. 1—Dark Hard Winter Wheat No. 1—Hard Winter Wheat No. 1—Yellow Hard Winter Wheat No. 1—Red Winter Wheat	At 1 cent per bushel over contract price.
No. 1—Northern Spring Wheat No. 1—Dark Northern Spring Wheat No. 2—Hard Winter Wheat No. 2—Dark Hard Winter Wheat No. 2—Yellow Hard Winter Wheat No. 2—Red Winter Wheat	At contract price.

3. That, continuing the provisions of paragraph 3 of Regulation 1864-A, on and after the opening of trading Thursday, June 29, 1944, no contract calling for the future delivery of wheat may be traded in at prices higher than $1.73⅜ per bushel.

4. That, Regulation 1864, adopted January 4, 1944, was rescinded as of the opening of business Monday, January 10, 1944.

*1865. STOP ORDERS ON ODD LOTS OF GRAIN. (Interpreting Rule 40).—In determining when an odd-lot stop order becomes a market order, only the market price of round lots (5000 bushels or multiples thereof) shall govern.

*1866. (Interpreting Rules 202-A and 258 and Regulation 1809-A).—All futures transactions resulting in change of ownership (except those involving the exchange of futures in cash transactions) must be made in the open market in the manner prescribed by Rules 202-A and 258.

*1867. WIRE CHARGES ON GIVE-UPS (Interpreting Rule 223).

1. Instructions on give-ups must be received in sufficient time to permit clearing trades in the current day's business.
2. Wire charges on give-ups are applicable either from points within or without the city of Chicago at the rates prescribed in the rule.
3. Only one wire charge shall apply on each transaction and where two or more members are engaged in transmission the wire charge may be divided as mutually agreed.
4. If the account of the non-member (referred to in the second paragraph of Rule 223) is not carried by the Clearing Member, the Clearing Member shall collect the full wire service charge from the member carrying the account. In such cases, the Clearing Member is not permitted to absorb any part of the wire service charge; but the member carrying the account may either pass the charge on to his customer or absorb it.

*1868. COMMISSION CHARGES ON GRAIN RECEIVED IN STORE ON FUTURE CONTRACTS:

1. When the customer orders the grain redelivered on a future contract in the same month—one future commission (for both the purchase and sale).

†Adopted March 8, 1944.
*Adopted March 8, 1944.

2. When the customer orders the grain redelivered on a future contract during a later month—two future commissions (one for the purchase and one for the sale).

3. When the customer orders the grain sold in store by grade (but not redelivered on a future contract)—one future commission for the purchase plus the commission specified in Paragraph a-1 of Rule 231 for the sale of the warehouse receipts.

*1869. MEMBERS RATES NOT DIVISIBLE (Interpreting Rules 231 and 232).—Members' rates of commission on future contracts and cash grain are minimum rates and may not be divided between two individuals, partnerships or corporations.

*1870. TRADING DURING THE FINAL SEVEN BUSINESS DAYS OF DELIVERY MONTH.—After trading in contracts for future delivery in the current delivery month has ceased in accordance with Regulation 1832, no outstanding contracts for such delivery may be liquidated by means of an exchange of such current futures for the cash commodity.

No office deliveries of warehouse certificates may be made by members of the Clearing Corporation. Where a commission house as a member of the Clearing Corporation has an interest both long and short for customers on its own books, it must tender to the Clearing Corporation such warehouse certificates as it receives from its customers who are short.

*1871. PRICE OF EXECUTION BINDING.—The price at which an order for commodities or securities is executed shall be binding and no member shall make any adjustment with his customer because of an error in handling the order without first obtaining permission from—

1. the Floor Practices Committee, if the error occurred on the Floor of the Exchange, or

2. the Rules Committee, if the error occurred elsewhere.

(See Regulations 1021, 1718 and 1843)

*Adopted March 8, 1944.

Miscellaneous Regulations

NEW REGULATION—1872
(To be inserted in Rule Book)

On April 4, 1944, the Directors adopted the following new Regulation:

REGULATION 1872.—TRADING IN MAY, 1944 OATS AND BARLEY FUTURES.—WHEREAS, the prices of futures contracts calling for the delivery of oats in May, 1944, and barley in May, 1944, have been for some considerable time "bid" at the permissible ceiling, and

WHEREAS, the supply of oats and barley at the present time available in this market does not seem to be adequate to justify new trading in these contracts, and

WHEREAS, an emergency exists because of these circumstances, the Directors, acting under the provisions of Rule 251, order

1. Beginning at the opening of trading Wednesday, April 5, 1944, no new futures contracts, calling for the delivery of oats in May, 1944, or barley in May, 1944, may be entered into, and
2. That trades in futures contracts calling for the delivery of oats in May, 1944, barley in May, 1944, may be made only for the purpose of liquidating contracts which were outstanding at the close of business Tuesday, April 4, 1944, and
3. That clearing members must, before accepting and executing any futures orders calling for the delivery of oats in May, 1944, or barley in May, 1944, determine that such orders are in fact for the purpose of liquidation only.

NEW REGULATION—1873
(To be inserted in Rule Book)

On May 9, 1944, the Directors adopted the following new Regulation:

REGULATION 1873—TRADING IN MAY WHEAT FUTURES.—WHEREAS, the Directors have found that the best interest of

the Exchange requires emergency action with respect to trading in futures contracts for delivery of wheat in May 1944, and

WHEREAS, an emergency exists because of these circumstances the Directors, acting under provisions of Rule 251, order,

1. Beginning at the opening of trading Wednesday, May 10, 1944, no new futures contracts, calling for the delivery of wheat in May 1944, may be entered into, and
2. That trades in futures contracts calling for the delivery of wheat in May 1944 may be made only for the purpose of liquidating contracts which were outstanding at the close of business Tuesday, May 9, 1944, and
3. That clearing members must, before accepting and executing any futures orders calling for the delivery of wheat in May 1944, determine that such orders are in fact for the purpose of liquidation only.

NEW REGULATION—1874
(To be inserted in Rule Book)

On May 29, 1944, the Directors adopted the following Regulation:

1874. SETTLEMENT OF MAY 1944 OATS, BARLEY AND WHEAT FUTURES CONTRACTS. WHEREAS, the Office of Price Administration issued Maximum Price Regulation 511 (Oats and Barley), effective February 4, 1944, and Revised Maximum Price Regulation 487 (Wheat), effective January 4, 1944, and

WHEREAS, such Regulations prescribe maximum prices on oats, barley and wheat which have interfered with the normal movement of these grains into this market, and

WHEREAS, the demand for these grains has been so great that it is impossible to secure cash oats, cash barley and cash wheat for the purpose of making delivery on May 1944 futures contracts, and

WHEREAS, the unprecedented demand for all grains arising from the war food program and the unusual climatic condi-

tions which have delayed and interfered with farm work and caused farmers generally to delay shipment of these grains to market, and

WHEREAS, on April 4, 1944, the Directors ordered that no new futures trades for delivery of oats or barley in May 1944, might be entered into, and

WHEREAS, on May 9, 1944, the Directors ordered that no new futures trades for delivery of wheat in May 1944 might be entered into, and

WHEREAS, there have been failures to tender to the Clearing Corporation notices of intention to deliver oats, barley and wheat on May 1944 futures contracts as prescribed by the Rules, and

WHEREAS, an emergency exists because of this situation, the Directors, acting under the provisions of Rule 251, order

1. That all futures contracts calling for the delivery of oats, barley and wheat in May 1944 outstanding at the close of business Monday, May 29, 1944, and on which notices of intention to deliver were not delivered to the Clearing Corporation before 1:45 P. M. Monday, May 29, 1944, must be settled at the following maximum prices prescribed under the Maximum Price Regulations heretofore mentioned, namely, on contracts calling for the delivery of oats $.82 per bushel; on contracts calling for the delivery of barley $1.28 per bushel and on contracts calling for the delivery of wheat $1.73⅜ per bushel, and
2. That commission merchants and the Clearing Corporation make settlement of all such contracts on Wednesday, May 31, 1944.

On July 24, 1944, the Directors adopted the following new Regulation 1875:

"1875.—WHEREAS, the Office of Price Administration has issued Food Products Regulation No. 2 and Supplement No. 2 to Food Products Regulation No. 2, and

Miscellaneous Regulations

WHEREAS, these regulations establish prices for different grades of oats not in conformity with our normal trade practices,

NOW, THEREFORE, The Directors, acting under the provisions of Rule 251, as an emergency measure, effective Wednesday, June 26, 1944, and until further notice, order

1. That the paragraph in Rule 292 prescribing differentials for different grades and types of oats be temporarily set aside and the following be substituted and continued in lieu thereof as applicable on all contracts for delivery in months subsequent to July 1944 now open or to be created.

OATS DIFFERENTIALS

No. 1—Extra Heavy White or Red Oats ..... 5¢ per bushel over contract price

No. 1—Heavy White or Red Oats ..... 2¢ per bushel over contract price

No. 1—White or Red Oats ..... 1¢ per bushel over contract price

No. 2—Extra Heavy White or Red Oats ..... 4¢ per bushel over contract price

No. 2—Heavy White or Red Oats ..... 1¢ per bushel over contract price

No. 2—White or Red Oats ..... At Contract Price

No. 3—Extra Heavy White or Red Oats ..... 3¢ per bushel over contract price

No. 3—Heavy White or Red Oats ..... At Contract Price

No. 3—White or Red Oats ..... 3¢ per bushel over contract price

Bright Oats shall carry no additional premiums or discount.

2. That, on and after the opening of trading on Wednesday, July 26, 1944, no contract calling for the future

delivery of oats may be traded in at prices higher than 82 cents per bushel.

3. That, all notices of intention to deliver oats in months subsequent to July 1944 must be accompanied by a receipt from the operator of the elevator in which the oats are stored showing that all charges for elevation and loading out have been paid or the warehouse receipt must have endorsed upon it that such payment has been made, or in case of delivery of oats in cars under the provisions of Rule 282, the notice of intention to deliver must be accompanied by a check sufficient to pay, at the customary rate in public warehouses in Chicago, all elevation and outloading charges."

NEW REGULATIONS
(Insert in Rule Book)

On July 28, 1944, the directors adopted the following new Regulation 1876:

"1876. WHEREAS, the Office of Price Administration has issued Food Products Regulation No. 2 and Supplement No. 3 to Food Products Regulation No. 2, (Barley), and

WHEREAS, these regulations establish prices for different grades of barley not in conformity with our normal trade practices and provide a specific method for calculating maximum prices on barley futures contracts,

NOW, THEREFORE, The Directors, acting under the provisions of Rule 251, as an emergency measure, effective Tuesday, August 1, 1944, and until further notice, order

1. That the paragraph in Rule 292 prescribing differentials for different grades and types of barley be temporarily set aside and the following be substituted and continued in lieu thereof as applicable on all contracts for delivery in months subsequent to July 1944 now open or to be created.

Miscellaneous Regulations

BARLEY DIFFERENTIALS

No. 1—Barley of Class I—At 1¢ per bushel over contract price

No. 2—Barley of Class I—At Contract price

No. 3—Barley of Class I—At 2¢ per bushel under contract price

Provided, however, that no such barley tendered on contracts for future delivery shall have a dockage in excess of 2%. Allowance shall be made by the seller to the buyer for dockage up to 2%.

2. That, on and after the opening of trading on Tuesday, August 1, 1944, no contract calling for the future delivery of barley may be traded in at prices higher than 123½ cents per bushel.

3. That, all notices of intention to deliver barley in months subsequent to July 1944 must be accompanied by a receipt from the operator of the elevator in which the barley is stored showing that all charges for elevation and loading out have been paid, or the warehouse receipt must have endorsed upon it that such payment has been made, or in case of delivery of barley in cars under the provisions of Rule 282, the notice of intention to deliver must be accompanied by a check sufficient to pay, at the customary rate in public warehouses in Chicago, all elevation and outloading charges."

NEW REGULATION—1877

(To be inserted in Rule Book)

On September 12, 1944, the Directors adopted the following Regulation 1877 and instructed the Market Report Committee to permit trading for the present in contracts for the delivery of corn in December, 1944, May and July, 1945.

The Directors further instructed the Market Report Com-

mittee to fix limitations on prices for the first day's trading in corn futures at not more than 5¢ above or below the opening range of prices, but in no case higher than 118¼¢ per bushel.

1877. TRADING IN CORN FUTURES.—WHEREAS, the Board announced December 4, 1943, in Regulation 1862 and again by mimeograph communication March 1, 1944, that the membership would be given notice when and under what conditions new futures contracts calling for the delivery of corn might be entered into, and

WHEREAS, the price differentials prescribed in Rule 292 with respect to grades and types of corn deliverable on futures are not in agreement with the price differentials for grades and types of corn described in Second Revised M.P.R. 346 (Corn) and

WHEREAS, it is necessary and desirable that futures trading in corn contracts be made available to all interested parties including producers, and

WHEREAS, an emergency exists because of this situation, the Board acting under the provisions of Rule 251 orders, until further notice,—

1. That this Regulation 1877 shall become effective at the opening of the market on Thursday, September 14, 1944.

2. That Regulation 1862, adopted December 4, 1943, be and it hereby is rescinded.

3. That the paragraph in Rule 292 prescribing differentials for different grades and types of corn be temporarily set aside and that the following be substituted in lieu thereof as applicable on all corn contracts that may be entered into—

CORN DIFFERENTIALS.

No. 1 Yellow Corn No. 2 Yellow Corn No. 1 Mixed Corn No. 2 Mixed Corn	At Contract Price
No. 3 Yellow Corn No. 3 Mixed Corn	At 2½¢ per bushel under contract price.

4. That no contracts for the future delivery of corn in any month be made at prices higher than 118¼¢ per bushel.

5. That all deliveries shall be made on an "in store" basis, the buyer paying elevation and loading-out charges.

EXHIBIT D

Commodity Exchange Act as Amended—Rules and Regulations of the Secretary of Agriculture promulgated thereunder. Orders of Commodity Exchange Commission pursuant to Section 4(a) and order of Secretary of Agriculture pursuant to Section 5(a) of Act.

EXHIBIT E

Regulations for Warehousemen Storing Grain. Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended.

And afterwards on, to wit, the 23rd day of October, 1944 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice and Motion for Preliminary Injunction in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff,* vs. Illinois Commerce Commission; John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants.*	Civil Action No. 44 C 1253 Injunction Sought

NOTICE

To:

Hon. George F. Barrett
Attorney General, State of Illinois
Suite 786
208 South La Salle Street

Irvin Rooks
Lee A. Freeman
Suite 3710
135 South La Salle Street

Please take notice that on Monday, October 23, 1944, at the opening of court in the forenoon, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Michael L. Igoe, in the room usually occupied by him as a courtroom, and then and there move the court for a preliminary injunction in the above entitled cause, a copy

of which motion is attached, together with a copy of the verified complaint in said cause.

Weymouth Kirkland,
Howard Ellis,
William H. Symmes,
Attorneys for Board of Trade of the City of Chicago.

Received a copy of the foregoing Notice, Motion and Complaint in the above entitled cause this 20th day of October, A. D. 1944.
Irvin Rooks,
Lee A. Freeman,
Attorneys for Defendants.
George F. Barrett,
Attorney General.

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff,* vs. Illinois Commerce Commission; John D. Biggs, William Parillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission and Daniel F. Rice & Company, a partnership, *Defendants.*	Civil Action No. 44 C 1253 Injunction Sought

MOTION FOR PRELIMINARY INJUNCTION

Board of Trade of the City of Chicago moves the court for a preliminary injunction enjoining the defendants, Illinois Commerce Commission; John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Wash-

ington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company a partnership, pending the final hearing and determination of this action, from continuing jurisdiction of the cause of Daniel F. Rice & Company et al., Plaintiff vs. Chicago Grain Corporation et al. and Board of Trade of the City of Chicago, No. 32267, before the Illinois Commerce Commission, and from proceeding with a hearing in said cause as to this defendant on October 24, 1944, or at any other time prior to the final order and determination of this cause, on the grounds set forth in the verified complaint of this plaintiff, a copy of which complaint is attached hereto.

Weymouth Kirkland,
Howard Ellis,
William H. Symmes,
Attorneys for Board of Trade of the City of Chicago, Plaintiff.

And afterwards on, to wit, the 1st day of November, 1944 there was filed in the Clerk's office of said Court, a certain Appearance of Attorney General, George F. Barrett, for Illinois Commerce Commission et al., Defendants, in words and figures following to wit:

UNITED STATES DISTRICT COURT
Eastern Division
Northern District of Illinois

Board of Trade of the City of Chicago, a Corp.	
vs.	No. 44C 1253
Illinois Commerce Commission, et al.	

APPEARANCE

Mr. Clerk:

I enter my appearance as attorney for Illinois Commerce Commission and John D. Biggs, William Parrillo, Frank

Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of said Commission in the above entitled case.

Dated at Chicago on the
1st day of November 1944.

Address: *Attorney General of Illinois,*
George F. Barrett,
Attorney General of Illinois,
208 S. LaSalle St., Room 786,
Chicago, Ill.

And afterwards on, to wit, the 8th day of November, 1944 there was filed in the Clerk's office of said Court a certain Appearance of attorneys for Daniel F. Rice & Company, a partnership in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff,* vs. Illinois Commerce Commission; John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants.*	Civil Action No. 44 C 1253

APPEARANCE

To the Clerk of the United States District Court:

We hereby enter our appearance in the above entitled cause, as attorneys for Daniel F. Rice & Company, a partnership.

Dated at Chicago, Illinois, on the 8th day of November, 1944.

Irvin Rooks,
Lee A. Freeman,
Attorneys for Daniel F. Rice & Company, a partnership,
135 S. LaSalle St., Suite 3710
Chicago 3, Illinois
ANDover 2112

And afterwards on, to wit, the 28th day of December, 1944 came the Defendants, Illinois Commerce Commission, et al., by their attorneys and filed in the Clerk's office of said Court their certain Answer in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff,* vs. Illinois Commerce Commission; John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants.*	Civil Action No. 44 C 1253 Injunction Sought

ANSWER OF ILLINOIS COMMERCE COMMISSION AND ITS CHAIRMAN, JOHN D. BIGGS, AND WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL. J. WASHINGTON, MEMBERS OF SAID COMMISSION, TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION.

Come now the defendants, Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo,

Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, by George F. Barrett, Attorney General of the State of Illinois, their attorney, to answer the motion of the plaintiff for a preliminary injunction in the above entitled cause and for answer state:

1. These defendants deny that the plaintiff is entitled to a preliminary injunction as set forth in its said motion for a preliminary injunction, on the grounds set forth in the motion to strike the plaintiff's complaint and dismiss the cause, filed herein by the said defendants.

2. That for the reasons set forth in defendants' motion to strike the plaintiff's complaint and dismiss the cause, filed herein, these defendants deny the allegations of plaintiff's complaint and further deny that the plaintiff is entitled to any relief as prayed in said complaint; that plaintiff has on numerous occasions, in past years, submitted itself to the jurisdiction of the Illinois Commerce Commission and is therefore now estopped from denying state jurisdiction.

Wherefore, these defendants pray that the motion of the plaintiff herein for a preliminary injunction be denied.

ILLINOIS COMMERCE COMMISSION and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission,

By George F. Barrett,
Attorney General of the State of Illinois,
Attorney for said Defendants.

And on the same day, to wit, the 28th day of December, 1944 came the Defendants, Illinois Commerce Commission, et al., by their attorneys and filed in the Clerk's office of said

Court their certain Motion in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff,* vs. Illinois Commerce Commission; John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants.*	Civil Action No. 44 C 1253 Injunction Sought

MOTION OF ILLINOIS COMMERCE COMMISSION AND ITS CHAIRMAN, JOHN D. BIGGS, AND WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL. J. WASHINGTON, MEMBERS OF SAID COMMISSION, TO STRIKE THE PLAINTIFFS' COMPLAINT AND DISMISS THE CAUSE.

Now come Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, by George F. Barrett, Attorney General of the State of Illinois, their attorney, and for this their motion to strike the plaintiffs' complaint and to dismiss the plaintiffs' cause, say and show unto the court that the said complaint is infirm, informal, insubstantial and insufficient in law and in equity; and as and for the particular grounds of the said motion the defendants say and show unto this court:

1. That this court is without jurisdiction of the subject matter of this cause and the parties hereto because the complaint does not fairly make, state or plead a cause of action under the constitution or laws of the United States of America.

2. That this court is without jurisdiction of the subject matter of this cause, and of the parties hereto because the

Federal District Court lacks jurisdiction by reason of section 24(1) of the Judicial Code, Title 28, U.S.C.A., sec. 41(1), commonly referred to as the Johnson act, Amendment of 1934.

3. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint does not allege or show that the plaintiff has first exhausted its administrative or statutory remedies available to it by the statutes of the State of Illinois.

4. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint failed to make the Attorney General of Illinois a party defendant.

5. That this court is without jurisdiction of the subject matter of this cause and the parties hereto because the complaint fails to show that the plaintiff had no adequate remedy at law.

6. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint fails to show that plaintiff shall suffer grave and irreparable damage unless equity grants relief.

7. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint does not make, state or plead any case, cause of action or ground of relief either at law or in equity.

8. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint does not make, state or plead a case or cause of action within Federal jurisdictional requirements.

9. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the Commodity Exchange Act, 7 U.S.C.A., sec. 1, as amended, is limited in its scope and does not preclude the jurisdiction of the Illinois Commerce Commission over the Chicago Board of Trade pursuant to the constitution and statutes of the State of Illinois.

10. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because it appears upon the face of said complaint that the Commodity Exchange act is limited in its scope and does not preempt the field of regulation of grain warehouses with respect to those matters in issue before the Illinois Commerce Commission on the Rice complaint.

11. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint is otherwise and in other matters, respects and particulars infirm, informal, insubstantial and insufficient in law and in equity.

Wherefore, the defendants pray that the plaintiffs' complaint be stricken and that the above entitled cause be dismissed at the cost of the plaintiff.

ILLINOIS COMMERCE COMMISSION and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission,
By George F. Barrett,
Attorney General of the State of Illinois,
Attorney for said Defendants.

And afterwards on, to wit, the 30th day of December, 1944 came the Defendants, Daniel F. Rice, et al., by their attorneys and filed in the Clerk's office of said Court their certain Answer in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff,* vs. Illinois Commerce Commission; John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants.*	Civil Action No. 44 C 1253 Injunction Sought

ANSWER OF RICE DEFENDANTS

Defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F.

Rice & Co., a partnership, by their attorneys, Irvin Rooks and Lee A. Freeman, separately answering the complaint of the plaintiffs in this action, state:

First Defense

The federal district court is precluded from taking jurisdiction in this matter under the 1934 Amendment of Section 24(1) of the Judicial Code (Title 28, U.S.C.A., Sec. 41(1)), commonly known as the Johnson Act.

Second Defense

The suit is premature and must be dismissed since plaintiff failed to exhaust the administrative and statutory remedies available to it before the Illinois Commerce Commission.

Third Defense

The complaint must be dismissed since plaintiff possesses a plain, speedy and adequate remedy at law.

Fourth Defense

The complaint fails to state a claim against these defendants upon which equitable relief can be granted, and fails to establish by affidavit or otherwise, facts to warrant the issuance of either a temporary or permanent injunction.

Fifth Defense

Plaintiff fails to clearly and positively establish an actual or imminent threat of grave and irreparable damage amounting to manifest oppression unless injunctive relief were granted.

Sixth Defense

The complaint must be dismissed and injunctive relief denied since the Commodity Exchange Act and the United States Warehouse Act, both as amended (7 U.S.C.A., Secs. 1 et seq., Secs. 241 et seq.) are limited in scope and do not preempt the field of regulation of the Board of Trade of the City of Chicago with respect to those matters in issue before the Illinois Commerce Commission on the Rice complaint, nor do said federal enactments preclude the Illinois Commerce Commission from exercising regulatory authority over the plaintiff herein.

SEVENTH DEFENSE

Defendants, further answering, state:

(1) Admit the allegations in Paragraphs 1, 2, 4, 6 and 8.

(2) As to Paragraph 3 of the complaint, defendants deny the conclusions therein contained and affirmatively state that this court's jurisdiction to determine the issues involved has been withdrawn by the Johnson Act Amendment of 1934.

(3) Admit the allegations in Paragraph 5 of the complaint, and answering further say that the plaintiff was, on or about August 25, 1944, duly served with a proper notice by the Illinois Commerce Commission of the setting of the proceedings for hearing on September 12, 1944; that thereafter a moti ' dismiss was filed, upon which oral arguments were neard on October 26 and 27, 1944.

(4) As to the allegations in Paragraph 7 of the complaint, plaintiff denies each and every allegation, including the conclusion that the Commodity Exchange Act and regulations thereunder supersede and nullify all Illinois laws, statutes, constitution and regulations of the Illinois Commerce Commission, with respect to the operation of the Board of Trade of the City of Chicago; that Congress has fully and completely occupied and preempted the field of regulation of boards of trade; and that the plaintiff is not subject to the jurisdiction of the Illinois Commerce Commission.

(5) The allegations contained in Paragraph 9 of the complaint are speculative and conjectural. They consist of arguments and conclusions rather than the factual allegations prerequisite to a claim of grave and irreparable damage. Defendants specifically deny that Congress has fully and completely occupied and preempted the field of regulation of contract markets; that the Illinois Commerce Commission has assumed to exercise control over the same field regulated by Congress; that plaintiff will be subjected to suspension and revocation of its designation as a contract market if it were required to comply with the orders of the Illinois Commerce Commission; that plaintiff would suffer penalties under Illinois law; and that plaintiff

would be put to the necessity of incurring great expense in defending the suit before the Illinois Commerce Commission.

Answering further, defendants say that the Attorney General of the State of Illinois has not been made a party to this suit, nor has plaintiff prayed that this court enjoin the enforcement of penalties which might be assessed against plaintiff.

Answering further, upon information and belief, defendants say that the Attorney General of the State of Illinois has not been requested by the Illinois Commerce Commission or anyone else to institute an action to enforce penalties; that there do not exist at present any orders entered by the Illinois Commerce Commission which would serve as a basis for the assessment of penalties; that the Attorney General of Illinois does not now intend or threaten to institute proceedings to enforce penalties.

Answering further, defendants aver that no action is being taken by the Rice complainants before the Illinois Commerce Commission which could possibly result in the Board of Trade of the City of Chicago being required to violate provisions of the Commodity Exchange Act, and therefore the proceedings before the Illinois Commerce Commission could in no manner affect plaintiff's status as a contract market.

Wherefore, defendants pray that this action be dismissed, with costs assessed against plaintiff.

Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel R. Rice & Co., a partnership.

By /s/ Irvin Rooks
/s/ Lee A. Freeman
Attorneys for Defendants.

State of Illinois,
County of Cook. } ss.

Joseph J. Rice, being first duly sworn, says that he is one of the defendants in the above entitled cause, and a partner in the firm of Daniel F. Rice & Co., and as such he is authorized to make this affidavit for and on behalf of the other defendants herein; that he has read the foregoing answer, knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters, he believes them to be true.

/s/ Joseph J. Rice.

Subscribed and sworn to before me this 29th day of December, 1944.

/s/ M. E. Lalor,
Notary Public.

(SEAL.)

And afterwards on, to wit, the 15th day of June, 1945 there was filed in the Clerk's office of said Court a certain Memorandum Opinion of the Honorable Michael L. Igoe, District Judge, in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, vs. Illinois Commerce Commission, *et al.*	Civil Action No. 44 C 1253
Great Lakes Elevator Corporation, *et al.*, vs. Illinois Commerce Commission, *et al.*	Civil Action No. 44 C 1257

MEMORANDUM OPINION

In No. 1257 plaintiffs who are licensed warehousemen under the United States Warehouse Act seek to enjoin the Illinois Commerce Commission from hearing a complaint

which charges plaintiffs with acts in violation of the constitution and regulatory statutes of Illinois. The Commission overruled a motion to dismiss, and set the case for hearing. Plaintiffs contend that the Illinois constitutional and statutory provisions have been so completely superseded by the Federal Act that the Commission may not even hold a hearing, and even though the Commission after the hearing may not take any action in conflict with the authority conferred upon the Secretary of Agriculture by the Federal law.

In No. 1253, plaintiff relies upon the Commodities Exchange Act as superseding the authority of the Commission.

In order to sustain the injunctions prayed for the court must decide that the Federal Law has completely extinguished State investigation and regulation in the entire field in which the Commission has announced its intention to hold a hearing.

The State of Illinois has enacted the Illinois Grain Warehouse Act. By its Public Utilities Act of 1913 and subsequent acts, public warehouses for the storage of grain are public utilities and are subject to the comprehensive regulatory provisions of that law, including court review. Control over such warehouses has been exercised by most of the States. The Supreme Court of the United States has decided that regulation of such warehouses engaged in interstate commerce does not amount to regulation of such commerce, in the absence of conflict with Federal legislation.

The Federal Warehouse Act of 1916 does not purport to be a utility regulatory act. It is aimed at fraudulent practices in connection with warehouse receipts for agricultural products which are stored for interstate commerce. Its provisions are applicable only to those who seek and obtain a government license. The act does not provide a method for establishment of just and reasonable rates or the elimination of discriminatory practices. The only remedy under that act is revocation of the license. The act does not impair or limit the effect of any State law relating to warehouse or warehousemen.

Amendments to that act have not changed it materially. The 1931 amendment does not add to it any of the regulatory provisions usually found in regulatory statutes. It does not fix standards, require findings, or provide for ju-

dicial review. The amendment to section 29 does not in my opinion transform the statute into a comprehensive Federal plan for the regulation of these licensed utilities, and does not operate to supersede the provisions of the Illinois law so completely that the Commission may not even make an investigation of any of the matters covered by the complaint before it.

I recognize that this is a field in which widely different views have been expressed, but the rule which seems to me to be applicable is that it must clearly appear that the Federal provisions are inconsistent with those of the State. The amendment does not say that State officials may not proceed under State laws without the approval of the Secretary; on the contrary, it authorizes the Secretary in his discretion to cooperate with the State officials. Congress has not provided a substitute for the regulatory statutes of the State. The Secretary has not been authorized to prescribe rates; the penalties were not extended to cover discriminatory practices, and the Secretary can only revoke the license. That official is given no direct authority over the financial transactions and security issues of the licensee. There is no safeguard against improper abandonment of the public service. There are no provisions for complaints, hearings, findings, and court review. In all material respects, the powers of the Secretary are just as they were before the amendment of section 29. Forfeiture of the license gives only negative protection to the public. The State can still fix reasonable rates and prevent discriminatory rates and protect against improper financial transactions and security issues. In my opinion, there is no direct conflict between a licensing system to protect against fraudulent warehouse receipts, and utility regulation to preserve the service in the public interest, and it does not clearly appear that the State law has been completely superseded as to all of the matters covered by the complaint. The same principles apply to the suit based upon the Commodities Exchange Act.

Orders and findings may be presented denying the injunctions.

Michael L. Igoe,
Judge United States District Court.

Dated, June 15th, 1945.

And afterwards, to wit, on the 26th day of June, 1945, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff*, vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants.*	Civil Action No. 44 C 1253 Injunction Sought

ORDER

This cause coming on to be heard on the verified complaint of the plaintiff herein, and the verified answers of Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Company, a partnership, defendants herein, and upon the motion of defendants, the Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said commission, to strike the plaintiff's complaint and dismiss the cause, and upon the motion of plaintiff for an injunction in accordance with the plaintiff's complaint, and upon the verified answers of defendants to said motion, the court being fully advised in the premises and having heard arguments of counsel, and having considered the briefs filed by the parties herein, and the court having ren-

dered its memorandum opinion, which is attached hereto and made a part hereof, does hereby find:

1. The facts and law applicable thereto to be as contained in the memorandum of opinion attached hereto.

2. The Board of Trade of the City of Chicago, plaintiff herein, is a board of trade and grain exchange within the meaning of the Illinois Grain Warehouse Act (*Ill. Rev. Stats.* 1943, Ch. 114, Secs. 189-221).

3. The Board of Trade of the City of Chicago, plaintiff herein, is designated as a contract market under the Commodity Exchange Act by the Secretary of Agriculture.

4. The Board of Trade of the City of Chicago, plaintiff herein, is subject to the jurisdiction of the Illinois Commerce Commission in that all of the rules and regulations of the Board of Trade of the City of Chicago, plaintiff herein, which relate to the warehousing of grain in public warehouses, the custody of grain in private warehouses, and the use or negotiation of custodian receipts, are subject to the approval of the Illinois Commerce Commission before becoming operative.

5. The Commodity Exchange Act, as amended, is a limited and circumscribed exercise of federal control of futures trading on contract markets, and is not a general or comprehensive regulatory statute.

6. The jurisdiction of the Illinois Commerce Commission over plaintiff herein is not preempted or superseded by the Commodity Exchange Act, as amended, with respect to the authority granted by Section 194b of the Illinois Grain Warehouse Act (*Ill. Rev. Stats.* 1943, Ch. 114, Secs. 189-221).

7. The equities involved herein are against the plaintiff and in favor of the defendants, and the relief prayed by the plaintiff herein should be denied.

It is therefore ordered, adjudged and decreed that the injunction and the relief prayed for by plaintiff herein be and the same are hereby denied.

It is further ordered, adjudged and decreed that the motion of the defendants filed herein to strike plaintiff's complaint and dismiss the cause be and the same is hereby sustained.

It is further ordered, adjudged and decreed that the

above entitled cause be and the same is hereby dismissed at the cost of plaintiff.

ENTER:

IGOE,
Judge.

Dated: June 26, 1945.

And afterwards on, to wit, the 6th day of July, 1945, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants-Appellees.*	Civil Action No. 44 C 1253

NOTICE OF APPEAL

Notice is hereby given that Board of Trade of the City of Chicago, a corporation, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit, from the final judgment order or decree entered in this action on June 26, 1945, denying plaintiff an injunction, sustaining defendants' motion to strike plain-

tiff's complaint and dismiss the cause, and dismissing the cause at the cost of plaintiff.

Weymouth Kirkland,
Howard Ellis,
William H. Symmes,
Attorneys for Plaintiff-Appellant.

Post Office Address:
33 North La Salle Street,
Chicago, Illinois.

(Attached hereto is the following certificate):

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 7th day of July, 1945, in accordance with Rule 73(b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

George F. Barrett,
Attorney General,
208 South La Salle Street,
Chicago, Illinois.

Irvin S. Rooks and
Lee A. Freeman,
135 South La Salle Street,
Chicago, Illinois.

(Seal)

Roy H. Johnson, *Clerk.*

And on the same day, to wit, the 6th day of July, 1945, came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants-Appellees.*	Civil Action No. 44 C 1253

STATEMENT OF POINTS

Board of Trade of the City of Chicago, plaintiff in the above-styled action, now designates the points on which it will rely in prosecution of its appeal in said action:

1. That the court erred in failing to hold that the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U.S.C. 1-17a) superseded authority and jurisdiction of the Illinois Commerce Commission in the proceeding entitled—Daniel F. Rice and Company, etc., Plaintiff vs. Board of Trade of the City of Chicago, The Chicago Grain Corp., et al., Defendants, No. 32267.

2. That the court erred in failing to hold that the Commodity Exchange Act and the Regulations of the Secretary of Agriculture issued thereunder supersede and nullify the constitution of the State of Illinois and all laws, statutes and ordinances of the State of Illinois, and all orders and regulations of the Illinois Commerce Commission with respect to the operation of the Board of Trade of the City of Chicago as a contract market.

3. That the court erred in not holding that the Congress of the United States has fully and completely occupied and preempted the field of regulation of boards of trade, and the plaintiff as a contract market under said Act of Con-

gress is not subject to the jurisdiction of the Illinois Commerce Commission.

4. That the court erred in not holding that the Commodity Exchange Act preempted and superseded jurisdiction of the State of Illinois and any commission thereof with respect to the relief prayed for in the proceeding entitled—Daniel F. Rice and Company, etc., Plaintiff vs. Board of Trade of the City of Chicago, The Chicago Grain Corp., et al., Defendants, No. 32267, or any relief that could be afforded in said proceeding.

5. That the court erred in not holding that the Commodity Exchange Act, as amended, preempted and superseded jurisdiction of the Illinois Commerce Commission over plaintiff with respect to the authority granted by Section 194b of the Illinois Grain Warehouse Act (Ill. Rev. Stats. 1943, Ch. 114, Secs. 189-221).

6. That the court erred in not holding that the Illinois Commerce Commission did not have jurisdiction of Board of Trade of the City of Chicago with respect to Rules and Regulations of the Board of Trade of the City of Chicago which related to the warehousing of grain.

7. That the court erred in denying an injunction as prayed by the plaintiff.

8. That the court erred in entering judgment for the defendants.

9. That the court erred in dismissing said cause.

Dated July 5, 1945.

Weymouth Kirkland,
Howard Ellis,
William H. Symmes,

Attorneys for Plaintiff-Appellant.

Post Office Address:
33 North La Salle Street,
Chicago, Illinois.

And on the same day, to wit, the 6th day of July, 1945, came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Cash Bond on Appeal in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants-Appellees.*	Civil Action No. 44C1253

CASH BOND ON APPEAL

Know all men by these presents, That Board of Trade of the City of Chicago, a corporation, as principal, is held and firmly bound unto Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, in the full and just sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said Illinois Commerce Commission, John D. Biggs, William Parillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, their successors, assigns, attorneys, or administrators; to which payment, well and truly to be made, Board of Trade of the City of Chicago, a corporation, binds itself, its successors or assigns, jointly and severally, firmly by these presents.

Sealed with its seal and dated this 2nd day of July, in the year of our Lord one thousand nine hundred and forty-five.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court as Number 44 C 1253, between Board of Trade of the City of Chicago, a cor-

poration, Plaintiff vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, a judgment order or decree was rendered against plaintiff dismissing said cause at the cost of plaintiff, and the said Board of Trade of the City of Chicago, Plaintiff, having filed in the Clerk's Office of the District Court Notice of Appeal to the United States Circuit Court of Appeals for the Seventh Circuit, to reverse the judgment order or decree of the aforesaid suit in the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within forty (40) days from the date hereof.

Now, the condition of the above obligation is such, that if the said Board of Trade of the City of Chicago, a corporation, shall pay the costs if the appeal is dismissed or the judgment order or decree is affirmed, or pay such costs as the appellate court may award if the judgment order or decree is modified then the above obligation to be void; otherwise to remain in full force and virtue.

Board of Trade of the City of Chicago,
a Corporation,

By Harry C. Schaack,
President.

(SEAL)

Attest:

Fred H. Clutton,
Secretary.

Sealed and delivered in presence of:
William H. Symmes

.....

.....

Approved by:

.....

.....

And on the same day, to wit, the 6th day of July, 1945, came the Plaintiff-Appellant by its attorneys and filed in the Clerk's office of said Court its certain Notice of Service and Designation of Record in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants-Appellees.*	Civil Action No. 44 C 1253

NOTICE OF SERVICE

To:

George F. Barrett, Attorney General,
Albert J. Meserow, Assistant Attorney General,
208 South La Salle Street.

Irvin Rooks,
Lee A. Freeman,
135 South La Salle Street.

You are hereby notified that we are filing with the District Court of the United States for the Northern District of

Illinois, Eastern Division, the attached Designation of Record for appeal.

Weymouth Kirkland,
Howard Ellis,
William H. Symmes,

Attorneys for Plaintiff-Appellant.

Received a copy of the above Notice of Service and Designation of Record therein mentioned this 5th day of July, A. D. 1945.

George F. Barrett,
Albert J. Meserow,
Irvin Rooks,
Lee A. Freeman,
Attorneys for Defendants-Appellees.

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Board of Trade of the City of Chicago, a corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, *Defendants-Appellees.*	Civil Action No. 44 C 1253

DESIGNATION OF RECORD

To the Clerk of the District Court of the United States for the Northern District of Illinois:

Board of Trade of the City of Chicago, a corporation, plaintiff in the above-styled action, now designates the fol-

lowing material for the transcript of record on the appeal in said action:

1. The complaint, including all exhibits filed therewith, filed October 19, 1944.

2. Motion of plaintiff for preliminary injunction, filed October 23, 1944.

3. Appearances of defendants.

4. Verified answers of defendants to motion for injunction, filed December 28, 1944.

5. Answer of George F. Barrett, Attorney General of the State of Illinois, to plaintiff's motion for a preliminary injunction, filed December 28, 1944.

6. Motion of Illinois Commerce Commission and its members to strike the plaintiff's complaint and dismiss the cause, filed December 28, 1944.

7. Answer of Illinois Commerce Commission and its members to plaintiff's motion for a preliminary injunction, filed December 28, 1944.

8. Answer of Rice defendants, filed December 30, 1944.

9. Memorandum opinion of Judge Igoe, dated June 15, 1945.

10. The findings of fact and conclusions of law filed herein and order entered June 26, 1945.

11. The final judgment entered June 26, 1945.

12. The notice of appeal with date of filing.

13. Statement of points relied upon.

14. Appeal Bond.

15. This designation of record and notice and proof of service upon defendants-appellees attached thereto.

You are requested to prepare a transcript of said record in accordance with Rule 75(g) of the Federal Rules of Civil Procedure for the District Court of the United States, and to transmit the same to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, within 40

days from the date of the notice of appeal filed in this action, or within such extension of said time, not exceeding 90 days, as may be provided by order of the District Court.

Dated July 5, 1945.

Weymouth Kirkland,
Howard Ellis,
William H. Symmes,
Attorneys for Plaintiff-Appellant.

Post Office Address:
33 North La Salle Street,
Chicago, Illinois.

Northern District of Illinois, Eastern Division } ss:

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designation filed in this Court in the cause entitled: Board of Trade of the City of Chicago, a corporation, Plaintiff, vs. Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership, Defendants, Civil Action No. 44 C 1253, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 26th day of July A. D. 1945.

Roy H. Johnson,
Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit

Board of Trade of the City of Chicago, a corporation,

Plaintiff-Appellant,

vs.

Illinois Commerce Commission, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Commissioners of the Illinois Commerce Commission, and Daniel F. Rice & Company, a partnership,

Defendants-Appellees.

No. 8897

To Honorable Kenneth J. Carrick, Clerk:

STIPULATION

It is hereby and herewith stipulated and agreed by and between the parties to the above entitled cause, through their respective attorneys, that the printer when printing the record in the above entitled matter will omit the parts hereinafter designated, and when so stated print in lieu thereof the matter requested.

1. From Exhibit C attached to the complaint—"Rules and Regulations of the Board of Trade of the City of Chicago"—

Omit pages 92 to 104, both inclusive.
Omit pages 107 to 122, both inclusive.
Omit pages 142 to 151, both inclusive.
Omit pages 158 to 198, both inclusive.
Omit pages 203 to 207, both inclusive.
Omit pages 220 to 252, both inclusive.

2. Omit Exhibit D attached to the complaint—"Commodity Exchange Acts as Amended—Rules and Regulations of the Secretary of Agriculture Promulgated Thereunder"—and print in lieu thereof the following:

Exhibit D—Commodity Exchange Act as Amended—Rules and Regulations of the Secretary of Agriculture promulgated thereunder. Orders of Commodity Exchange Commission pursuant to Section 4(a) and order of Secretary of Agriculture pursuant to Section 5 (a) (4) of Act.

3. Omit Exhibit E attached to the complaint—"Regulations for Warehousemen Storing Grain—Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as Amended"—and print in lieu thereof the following:

Exhibit E—Regulations for Warehousemen Storing Grain. Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended.

4. Print word "rates" in place of word "rules" in line 17 on page 3 of memorandum opinion.

5. The attorneys for the various parties in their briefs may refer to any part of the record, although such part has not been printed, where it is considered by such attorneys that such omitted part is material to the argument or to a decision in this cause and the quotation of or reference to an unprinted part of the record shall not be grounds for objection by opposing counsel.

6. The printer will please print fifty (50) copies of the transcript of record and furnish three (3) copies each to the following:

George F. Barrett
Attorney General of Illinois
208 South LaSalle Street
Chicago, Illinois

Rooks & Freeman
135 South LaSalle Street
Chicago, Illinois

Kirkland, Fleming, Green, Martin & Ellis
33 North LaSalle Street
Chicago, Illinois

Mayer, Meyer, Austrian & Platt
231 South LaSalle Street
Chicago, Illinois

Ferre C. Watkins
135 South LaSalle Street
Chicago, Illinois

Poppenhusen, Johnston, Thompson & Raymond
11 South LaSalle Street
Chicago, Illinois

Dated: August 7, 1945.

Respectfully,

BOARD OF TRADE OF THE CITY OF CHICAGO,
Plaintiff-Appellant,

By WEYMOUTH KIRKLAND
HOWARD ELLIS
WILLIAM H. SYMMES
Its Attorneys.

ILLINOIS COMMERCE COMMISSION AND ITS MEMBERS,
Defendants-Appellees,

By GEORGE F. BARRETT
Their Attorneys.

DANIEL F. RICE & COMPANY, a partnership,
Defendants-Appellees,

By IRVIN ROOKS AND LEE A. FREEMAN
Their Attorneys.

Approved:

William M. Sparks
Circuit Judge
Aug. 9, 1945

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, filed on the twelfth day of September, 1945, in:

Cause No. 8897.

Board of Trade of the City of Chicago, a Corporation,
Plaintiff-Appellant,

vs.

Illinois Commerce Commission, *et al.*,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 28th day of June, A. D. 1946.

(signed) Kenneth J. Carrick,
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord one thousand nine hundred and forty-four and of our Independence, the one hundred and sixty-ninth.

Board of Trade of the City of Chicago, a Corporation,
Plaintiff-Appellant,
8897 *vs.*
Illinois Commerce Commission, *et al.*,
Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the eighth day of May, 1946, the following further proceedings were had and entered of record, to-wit:

Wednesday, May 8, 1946.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Charles G. Briggle, District Judge.

Board of Trade of the City of Chicago, a Corporation,
Plaintiff-Appellant,
8897 *vs.*
Illinois Commerce Commission, *et al.*,
Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Howard Ellis, counsel for appellant, and by Mr. Lee A. Freeman and Mr. William C. Wines, counsel for appellees, and the Court takes this matter under advisement.

And afterwards, to-wit: On the seventh day of June, 1946, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1945, April Session, 1946.

Board of Trade of the City of Chicago, a Corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, *et al.*, *Defendants-Appellees.*	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.
8897	
Great Lakes Elevator Corporation, *et al.*, *Plaintiffs-Appellants,* vs. Illinois Commerce Commission, *et al.*, *Defendants-Appellees.*	
8898	

June 7, 1946.

Before MAJOR and KERNER, *Circuit Judges*, and BRIGGLE, *District Judge*.

MAJOR, *Circuit Judge*. These are separate appeals from an order of the District Court, entered June 26, 1945, denying plaintiffs an injunction and sustaining defendants' motion to strike plaintiffs' complaint, and dismissing their causes of action. The appellant in No. 8897 is the Board

of Trade of the City of Chicago, and the appellants in No. 8898 are operators of warehouses for the storage of grain located in Chicago, Illinois. The latter have been licensed by the Secretary of Agriculture of the United States (hereinafter referred to as the Secretary), pursuant to the United States Warehouse Act (7 U. S. C. A. § 241, *et seq.*) (hereinafter referred to as the Warehouse Act). The appellees in both appeals are the Illinois Commerce Commission, the members of such Commission, Daniel F. Rice & Company and the Attorney General of Illinois. While separate briefs and arguments have been submitted to this court in behalf of the parties in each appeal, the questions for decision are of a kindred nature and we are of the view that both appeals may be appropriately considered and disposed of in the same opinion.

On July 28, 1944, Daniel F. Rice & Company (hereinafter referred to as Rice) caused to be filed before the Illinois Commerce Commission (hereinafter referred to as the Commission) their complaint against the appellants in Nos. 8897 and 8898, alleging violations of the Public Utility Act and the Illinois Grain Warehouse Act of the State of Illinois. Subsequently, there was filed before the Commission separate motions by the Board of Trade and by the warehousemen to dismiss such proceeding on the ground that the Commission was without jurisdiction. On October 10, 1944, the Commission, after consideration of briefs and oral argument, entered its order denying the motions to dismiss the Rice complaint and setting the cause for hearing on October 24, 1944.

Thereupon, the Board of Trade and the warehousemen filed in the District Court separate complaints for the purpose of enjoining the Rice defendants from the further prosecution of their proceedings before the Commission, of enjoining the Commission from entertaining further jurisdiction of said matter and the Attorney General of the State of Illinois from instituting any proceeding against the instant plaintiffs for the purpose of enforcing any order of the Commission in the case now pending before it. Motion to dismiss each of the complaints were interposed. The two causes were consolidated for hearing in the court below, and such motions to dismiss were allowed in a single order. As stated, there are two appeals from this order, one in No. 8897 and the other in No. 8898.

The contested issues in these appeals are predicated

upon a similar pattern. While stated by the respective parties in somewhat different phraseology, the essential question for decision on the merits is whether the federal government has by legislation so occupied and pre-empted the field of regulation of the Board of Trade in one appeal and the warehousemen in the other as to deprive the Commission of authority to grant the relief and therefore to regulate in the manner prayed for by Rice. In contending that the federal government has so occupied and pre-empted the field, the Board of Trade (appellant in No. 8897) relies upon the Commodity Exchange Act (7 U. S. C. A. § 1 *et seq.*), and the warehousemen (appellants in No. 8898) rely upon the Warehouse Act (7 U. S. C. A. § 241, *et seq.*). While these legislative enactments are separate and distinct, they are as applied to the facts of this case somewhat dependent upon each other, as will be hereinafter disclosed. Another issue raised by the Attorney General of Illinois is that the court below was without jurisdiction to hear and decide the questions presented.

We shall first consider the appeal by the warehousemen (No. 8898). In so doing, it appears desirable to relate further the facts as alleged in the complaint. Jurisdiction was alleged because the controversy arose under the laws of the United States, more particularly under the Warehouse Act, together with the regulations promulgated thereunder, and also by reason of Article 1, Section 8, Clause 3 of the United States Constitution. It was alleged that each of the plaintiffs was engaged in the public storage of grain for hire for interstate commerce under a license duly issued by the Secretary, pursuant to the Warehouse Act, and under a schedule of rates, charges and practices duly filed with the said Secretary, as required by law, and that each of said plaintiffs as a holder of such license was subject to said Warehouse Act and the rules and regulations duly promulgated thereunder. Each of the plaintiffs, except Great Lakes Elevator Corporation, dealt in grain, both on its own account and as agent for others.

The grain market at Chicago is the world's largest grain market. For the year ending December 31, 1943, approximately two billion bushels of grain were shipped into and out of that market both by rail and water, from and to states other than Illinois. Over 90% of the trade in grain futures contracts in the United States was transacted at the said market on the said Board of Trade, a corporation

which has been designated a contract market by the Secretary under the Commodity Exchange Act. Under that Act futures contracts on the Board of Trade and other contract markets may be satisfied by offsetting settlements between the contracting parties, by delivery in kind of the grain involved in the contract, or by the delivery of valid negotiable warehouse receipts of certain characteristics, including receipts issued under the Warehouse Act. The warehouse receipts issued to plaintiffs were issued under, and complied in all respects with the Warehouse Act, and were in general use upon the said Board of Trade in satisfaction of futures contracts on the interstate market, and as such were instruments of interstate commerce.

Then follows a review of the proceedings initiated by Rice before the Commission, plaintiffs' motions to dismiss and the action of the Commission thereon, as heretofore related and which need not be further detailed at this point. It was alleged that each of the plaintiffs, except Great Lakes Elevator Corporation, did business as an owner and merchandiser of grain and regularly stored, for interstate commerce, grain owned by it as well as that of others, in its warehouse or warehouses; that this right was permitted by the Warehouse Act and regulations, but that under the Constitution of the State of Illinois as construed by the Illinois Supreme Court it was illegal for a public warehouseman to store his own grain in a public warehouse operated by him. It was alleged that plaintiffs issued to themselves negotiable warehouse receipts for grain, in form prescribed by the Warehouse Act, representing in the aggregate many millions of dollars annually, and that such receipts represent the grain belonging to the owners of such warehouses. Such receipts were used by plaintiffs for the purpose of transferring title to such grain in sales to others and also as collateral for commercial loans obtained from banks. Such receipts were also used by others for a similar purpose. Many of such warehouse receipts were alleged to be outstanding and pledged as collateral for such loans. It was alleged that an application of the Illinois law would make the storing of such grain illegal and would destroy and seriously impair the value of such warehouse receipts in commercial transactions.

It was alleged that a hearing by the Commission on the Rice complaint would have the immediate effect of creating a cloud upon such warehouse receipts outstanding or to be

issued and that plaintiffs as well as the public would be subjected as a result to irreparable damages. It was further alleged that plaintiffs were subject to fine and imprisonment for failure to take out a state license under the Illinois law, and that the Commission by its refusal to dismiss the Rice complaint has decided that plaintiffs are subject to the laws of the State of Illinois and the penalties provided for violations thereof.

Each of the plaintiffs filed an affidavit in support of the motion for preliminary injunction, disclosing in detail the national scope of its business. These affidavits show the amount of grain in bushels and value shipped and received by such warehouses from states other than Illinois. (We see no occasion to detail such information inasmuch as no question is here raised but that plaintiffs were engaged in interstate commerce.) The affidavits recite the issuance by each of the plaintiffs of warehouse receipts on forms furnished by the Department of Agriculture, which state on their face that the grain received by each warehouseman was "for storage in the course of interstate or foreign commerce." For the purpose of showing the value of the federal licenses held by plaintiffs, the amount of grain for a designated period stored in each warehouse, including that owned by the warehouseman against which receipts were outstanding, was disclosed. The affidavits further show that each of the plaintiffs has filed with the Secretary schedules of rates and charges for the storage and handling of grain, and that each is regularly inspected and examined by representatives of the United States Department of Agriculture. It was further disclosed by the affidavits the amount of grain stored by the United States government during a designated period in each of the warehouses operated by plaintiffs. We see no reason to state the amount disclosed as to each warehouse. It is sufficient to state the amount was large; for instance, that stored by the Santa Fe elevator for a twelve month period was for 4,663,469 bushels.

The Attorney General, on behalf of himself and the Commission, raises the question that the lower court was without jurisdiction to entertain the complaint, contending that the suit was one requiring the convocation of a three-judge court, under § 266 of the Judicial Code (28 U. S. C. A. § 380), that the suit was inhibited by the Johnson Act (§ 24 (1) of the Judicial Code, 28 U. S. C. A. § 41 (1), as amended

in 1934), and that interstate commerce was not involved. While Rice made the same contention before the District Court, they have not raised the question here. The position of the Attorney General is predicated upon the erroneous premise, so we think, that plaintiffs by their bill sought to invalidate a state law as being in conflict with the federal Constitution or an enactment of Congress. The case was tried below and is presented here solely on the theory that the state law in question was superseded and rendered inoperative by federal enactment which has "pre-empted" the field in controversy. If the plaintiffs had succeeded below or if they succeed in this court, it would not mean that any provision of the Illinois law or Constitution has been invalidated. It would only mean that such law or constitutional provision is inapplicable to a situation such as the instant one.

§ 266 of the Judicial Code must be complied with only where the injunction is sought "upon the ground of the unconstitutionality of such statute," and § 24 (1) of the Judicial Code inhibits a federal court from taking jurisdiction where it is sought to enjoin the action of an administrative board, etc., where jurisdiction is based "solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States." It appears evident that neither of these provisions is controlling. Moreover, in the recent case of *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, the complaint alleged, as in the instant case, that the federal statute preempted and occupied the field so as to deprive the state agency of jurisdiction. The case was heard by a single judge. The jurisdictional question was raised in the Court of Appeals, 116 F. 2d 227, 230, wherein the court stated: "The suit was not one for three judges. It did not attack the constitutionality of the Alabama statutes, it affirmed their constitutionality." The Supreme Court (315 U. S. 148) decided the case on its merits without reference to the jurisdictional question. See also *Ex Parte Bransford*, 310 U. S. 354, 358; *Ex Parte Buder*, 271 U. S. 461; and *Ex Parte Hobbs*, 280 U. S. 168. While other points argued by the Attorney General on the jurisdictional phase have been noted, we think they are without merit.

This brings us to a consideration of the case on the merits. No question is raised but that Congress had the authority to exercise all regulatory power over federally

licensed warehouses to the exclusion of the state. In fact, such authority on the part of Congress is conceded. The question is, did Congress by the Warehouse Act intend to occupy and pre-empt the field to the exclusion of state authority? That the question is a troublesome one is evidenced by the legion of cases in which it has been considered. A discussion of the numerous cases relied upon by the respective parties for the purpose of distinguishing or reconciling them would perhaps be futile and serve no useful purpose. Reference to a few of the latest Supreme Court opinions will suffice.

In *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766, the court stated:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, (citing cases), or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. (Citing cases.)"

In *Hines* v. *Davidowitz*, 312 U. S. 52, 67, the court stated:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The case on its facts and questions decided most similar to the instant one is that of *Cloverleaf Butter Co.* v. *Patterson, supra*. The court (page 155) enumerates many cases in support of two propositions: (1) "Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation," and (2) "But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application."

We think it is fair to conclude that plaintiffs' contention in the instant matter is that this case falls within the sec-

ond category, while defendants contend that it falls within the first. In other words, defendants appear to concede that there has been a partial invasion of the field by the federal government but that a portion has been left open to the state, and included therein are those matters of which the Commission has assumed jurisdiction as a result of the Rice complaint.

Plaintiffs argue that Congress has specifically taken over all regulatory power concerning federally operated warehouses, or in the alternative, that it has done so by implication, and that exercise by the Commission of the matters before it "plainly and palpably infringes," the policy of Congress or presents an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The United States Warehouse Act was originally enacted in 1916. As thus enacted, Sec. 29 (7 U. S. C. A. Par. 269) provided:

> "* * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *."

In *Independent Gin & Warehouse Co.* v. *Dunwoody*, 40 F. 2d 1, the Court of Appeals for the Fifth Circuit, relying upon the provisions just quoted, affirmed a decree of the District Court which had refused to enjoin the state officials of Alabama from enforcing certain state regulations applicable to warehouses. Shortly thereafter (in 1931), Congress amended § 29 to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

A literal reading of this amended section furnishes strong support for plaintiffs' contention. Both the House Committee Report (H. Rept. 4, 71st Cong., 1st Sess., p. 4) and the Senate Committee Report (S. Rept. 1775, 71st Cong., 3rd Sess., p. 2) furnish further support to the theory that Congress by this amendment intended to eliminate the dual jurisdiction which had theretofore existed between the federal and state governments as to federally-operated warehouses. In a footnote we quote some of the more important statements contained in these reports.[1]

The only case of which we are aware wherein a court has considered the precise issue presented here is *In re Farmers Cooperative Ass'n.*, 8 N. W. 2d 557, decided by the Supreme Court of South Dakota in 1943. The opinion discloses that the licensing feature; in fact the general provisions of the South Dakota law concerning warehouses, are quite similar to those in Illinois. Two questions were before the court: (1) did the warehousemen fall within the reach of the power granted to Congress by the commerce clause of the Constitution? and (2) if so, did Congress intend to exert that power when it enacted the United States Warehouse Act? The first question, not involved in the instant case, was answered in the affirmative, notwithstanding the warehouse in question was local in character and not a part of interstate commerce. This conclusion was

1. In the House Report it was stated: "Under Section 29 • • • of the law as at present, if the Federal Act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. • • • To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject."

In the Senate Report it was stated: "Section 29 of the act now provides (quoting from Sec. 29). The effect of this wording is to make the Federal act subservient to State acts wherever there is a conflict. As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom."

The Report referred to the permissive feature of the federal Act and stated: "• • • if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. • • • In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency."

reached on the theory that the business of the warehouse affected interstate commerce. In an affirmative answer to the second proposition, the court, in denying the contention that the state and federal Acts were not in conflict, stated: "The collision between these acts is head on. It is but a question of which master the Cooperative must serve." The court then refers to § 29 as amended in 1931, and states:

> "We interpret this as a clear grant of discretionary power to the Secretary of Agriculture, to achieve the congressional aim either through cooperation with state officials in promoting state regulation, or by direct federal control. When the latter course is followed both by reason of the terms of the act, and the paramount nature of federal power, the federal control displaces state control."

In connection with this South Dakota decision, see *Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 253.

At the same time that Congress amended § 29 it also amended § 6 (7 U. S. C. A. Par. 247), which makes provision for the execution of a bond by warehousemen applying for a federal license. Prior to the amendment the section required a bond "to secure the faithful performance of his obligations as a warehouseman under the laws of the State, district or territory in which he is conducting such warehouse, as well as under the terms of this Act * * *." By the 1931 amendment the requirement that the bond be conditioned upon compliance with the laws of the State, district or territory in which the warehouse was conducting business was eliminated and it was only required that the bond be conditioned upon compliance with the federal act and federal regulations thereunder. Referring to this amendment, the Senate Committee Report (heretofore noted) stated: "* * * again this amendment to Section 6 naturally follows the amendment suggested to Section 29."

Another legislative expression of some significance is found in the Commodity Exchange Act (§ 5 (a), 7 U. S. C. A. Par. 7a (7)). This section makes it mandatory that receipts issued under the Warehouse Act be accepted in satisfaction of any futures contract without discrimination and "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law."

In this connection it is pertinent and of some importance to note that in *Cloverleaf Butter Co.* v. *Patterson, supra,* the court (page 155), cites in footnote 5 *Merchants Exchange* v. *Missouri,* 248 U. S. 365, 368, as one of the cases holding that the state was free to legislate upon matters left unregulated by the nation. True, the court in the *Merchants* case referred to § 29 of the Warehouse Act as manifesting the purpose of Congress not to supersede state laws. This reference, however, was made prior to the time § 29 was amended in 1931. More significant is that the court in the *Cloverleaf* case in footnote 6 (page 156) cites § 29 as an instance where Congress had specifically exercised its power of legislation so as to conflict with the regulation of the state, and that the federal legislation became exclusive in its application. The footnote reference was to § 29 as amended in 1931. Thus we have the court in the same opinion treating § 29 before it was amended as an illustration of dual authority and § 29 after it was amended as providing for sole authority in the federal government.

Defendants profess to discern from the language employed by Congress a purpose and intent to permit the states to share the control over federally licensed warehousemen. It is suggested that the language in § 29 as amended in 1931, by which the Secretary "is authorized to cooperate with state officials relating to warehousemen" recognizes such purpose. We think it more likely that Congress by this language recognized the existence of state laws over all warehouses even though they were instrumentalities of interstate commerce unless and until they had made application and obtained a license under the federal Act. If Congress intended to share with the states the control of the latter class of warehouses, it would seem that there was no real purpose for the amendments of 1931.

Defendants also make the point that the exclusive authority of the Secretary provided in § 29 is confined to that conferred "under this chapter," meaning the federal Warehouse Act. In connection with this point, much stress is placed upon a statement in *United States* v. *Hastings,* 296 U. S. 188, 199, wherein the court said with respect to amended § 29:

> "The amendment of 1931, with respect to conflict with the operation of state laws, does not militate against this limitation, for while the amendment as-

serts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act * * *."

The court there had before it the question of the sufficiency of an indictment which charged a theft from a federally licensed warehouse. The indictment was held bad for the reason that there was a failure to allege that the product stolen from the warehouse had been stored for interstate commerce, which the court held was essential to make the Federal act applicable. It was in this connection that the court made the statement just quoted. How this has any bearing upon the instant situation we are unable to discern. Evidently the Act in its relation to warehouses is limited to interstate commerce, and the Secretary's jurisdiction necessarily is confined to that field.

Defendants also stress the point that the obtaining of a license under the Act is permissive. We are unable to see how that affects the situation. It only means that the warehouseman may exercise an option as to whether he will operate under the state or federal law. When he exercises such option in favor of the latter, complies with its terms and has been issued a license, he is under the Act as definitely and certainly as though it was a mandatory requirement on his part. No vacuum is created, as defendants argue. Before he is issued a federal license he is under the control of the state, but after the federal license has been issued he is under the jurisdiction of the Secretary.

Defendants argue that the federal Act "in nature, form and intent is essentially a warehouse receipt Act" and that the purpose of its enactment was to establish "a warehouse receipt of respected value so that it would be accepted as collateral on loans." Whether the Act should be thus narrowly construed is open to argument, although a study of its provisions together with the legislative history lends support to the contention. Assuming, however, that this theory is correct, we are of the view that it is of little if any benefit to defendants' position. The importance which Congress attached to warehouse receipts is illustrated by the numerous conditions required as a prerequsite to their issuance. (See 7 U. S. C. A. § 260.) From their very nature it is reasonable to conclude that Congress intended that the federal government take over all authority necessary to preserve their legality, negotiability, safety and value. This

in itself required a broad field of control. It must be remembered that these receipts were issued against the grain stored in the warehouse and were conclusive evidence of ownership thereof. Exclusive jurisdiction over the receipts having been conferred upon the Secretary, it seems unreasonable to conclude that he should be required to share with the state jurisdiction over the grain against which the receipts were issued and over the warehouses in which such grain was stored. The efficient handling and preservation of such grain in a warehouse suitable and properly adapted to its storage was highly essential if the Secretary was to discharge properly the responsibility placed upon him in connection with the receipts.

Assuming arguendo that the Secretary was not given express authority over the matters now before the Commission (charged in the Rice complaint), it seems that such authority was clearly implied. This view is strongly supported by the decision in *Cloverleaf Butter Co.* v. *Patterson, supra,* where the court sustained the authority of a federal agency to the exclusion of state authority. The product involved was butter. The federal agency was given express authority over the finished product known as renovated butter but not over packing house butter. It was held that express authority over the former carried with it implied authority over the latter. The court on page 169 stated, "Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the Department of Agriculture," and that to so construe the federal Act "would not only hamper the administration of the federal act but would be inconsistent with its requirements."

A detailed discussion of the numerous violations charged in the Rice complaint would unduly prolong this opinion. We shall merely attempt to state the various matters complained of and show that the Secretary in the main has explicit authority with reference thereto. In this connection it is pertinent to observe that the Secretary (7 U. S. C. A. § 268) is authorized to promulgate all rules and regulations regarded by him as necessary for the efficient execution of the Act. In conformity with this provision, the Secretary has promulgated voluminous regulations designed no doubt to cover every feature of the management, control and operation of federally licensed warehouses, the storage of

grain therein and the issuance of warehouse receipts. No point is made by defendants but that these regulations are within the authority conferred by Congress upon the Secretary.

Perhaps the most important, at least the most controverted, charge is that the plaintiffs' warehousemen "have unlawfully maintained and do now maintain unjust, unreasonable and excessive rates and charges for services rendered, contrary to Sec. 32 of the Public Utility Act of Illinois." § 25 of the Warehouse Act provides that the Secretary may, after hearing, revoke a warehouseman's license "upon the ground that unreasonable or exorbitant charges have been made for services rendered." § 23 requires that reports be made to the Secretary concerning the "conditions, contents, operation and business" of the warehouse in such form and at such times as the Secretary may require. The rules and regulations promulgated by the Secretary under the Act require not only the filing of a schedule of charges but also the filing of a statement of any proposed change, together with the reason therefor, and it is required that such charges be conspicuously posted in the principal office of the warehousemen.

Defendants contend that there is no conflict between the two authorities because the authority to initiate or fix rates is solely a matter for the state and the Secretary has only the power to determine when rates are unreasonable or exorbitant, in other words, what might be termed a veto power. We think the contention is not tenable. It must be remembered that one of the conditions upon which the Secretary is authorized to issue a license is the showing by the applicant therefor that the charge which the latter proposes to make is not unreasonable or exorbitant. This is a matter solely for the determination of the Secretary. Assuming that the state authority has the right to fix such rate, it would of course have the right to determine a rate higher than that determined by the Secretary to be not unreasonable or exorbitant. In such a situation the warehouseman would be subjected to the penalty provided for a failure to comply with the state rate, and at the same time in order to procure or retain a federal license he would be compelled to violate such rate. Certainly a warehouseman could neither fix nor raise his charge without the approval of two separate and distinct authorities. We suppose that the essential function of a rate making body is to determine

rates which will be fair both to the utility and to the public, and it appears plain that the Secretary is vested with the authority to accomplish such purpose.

It was charged in the Rice complaint that plaintiffs or some of them violated Article XIII of the Illinois Constitution by dealing in grain owned and stored by them in their own warehouses. This provision of the Illinois Constitution was sustained in *Hannah* v. *People*, 198 Ill. 77. Affidavits filed in support of plaintiffs' bill disclose that several million bushels of grain were stored in plaintiffs' warehouses which were owned by them and for which receipts had been issued under federal authority. § 18 of the Act (Par. 260 U. S. C. A.) provides for the contents of receipts, and Par. (i) states, "If the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership" shall be shown. It is argued that this provision does not authorize a federally licensed warehouseman to store his own grain. We think it does. The fact that the Secretary has permitted such storage indicates that he has so construed the Act. To sustain defendants' contention on this point would immediately invalidate receipts of the value of millions of dollars. It would seriously impair one of the main purposes of the Act, that is, the integrity of warehouse receipts.

Plaintiffs were charged with discrimination against Rice, public grain producers, owners, shippers, dealers, etc., and with granting preferences and advantages to the federal government and agencies thereof, contrary to a provision of the Utility Act of Illinois. The manner of the alleged discrimination is not stated except it is asserted that the federal government and its agencies are charged a lower rate than that charged Rice.

§ 13 of the Act (Par. 254 U. S. C. A.) prohibits the discrimination by warehousemen and provides for storage "without making any discrimination between persons desiring to avail themselves of warehouse facilities." It would appear that this provision gives the Secretary authority to prevent discriminations either in favor of or against any person employing warehouse facilities. Although it appears that plaintiffs have favored the federal government and its agencies in the storage of grain, it is shown that the Secretary had knowledge thereof and acquiesced therein.

It was charged that some of plaintiffs received undue preferences and discriminated by mixing high quality grain with their own inferior grain, sacrificing part of storage charges to effect purchases and sale of grain, and rebating storage charges, retaining desirable transit tonnage for their own use, storing their own grain in warehouses with more reasonable insurance rates and unduly delaying loading of grain, all in violation of provisions of the Utility and Grain Warehouse Acts of Illinois. These are all matters, in our judgment, completely within the sphere of the federal regulatory power. As already noted, the federal Act permits a warehouseman to store his own grain, and the Secretary is authorized to prevent discrimination. In addition, § 15 requires inspection and grading of fungible agricultural products stored in the federally licensed warehouses; § 16 prohibits the mixing of fungible agricultural products of different grades; § 30 provides for fine and imprisonment for the fraudulent grading of agricultural products stored under the Act, and § 21 requires that stored products be delivered upon proper demand without unnecessary delay.

Plaintiffs or some of them were charged with maintaining unsafe, inadequate and inefficient warehouses, resulting in exorbitant and prohibitive insurance rates and in rendering inefficient service resulting in a deterioration of the grain stored in such warehouses. § 3 of the Act authorizes the Secretary of Agriculture: (1) "* * * to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products," and (2) "* * * to prescribe * * * the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care and responsibility for agricultural products stored therein." § 23 requires a warehouseman to make reports to the Secretary concerning the condition, contents, operation and business of a warehouse in such form and at such times as the Secretary may require. § 24 authorizes the Secretary to examine agricultural products stored in licensed warehouses and publish his findings. It appears that the affirmative authority thus conferred upon the Secretary by §§ 3, 23 and 24 is such as to give him control over the warehouses and the grain stored therein in the manners complained of in this paragraph.

Plaintiffs were charged with rendering services without

filing and publishing rates, rules and regulations as required by the state. Under regulation 5, § 3 of the Regulations, a federal licensee is required to file with the Secretary a schedule of charges to be made as well as a copy of the rules under which he operates. The regulation further provides that a copy of such rules and schedule of charges must be posted in the principal office of a warehouseman.

Another charge against plaintiffs was that they or some of them abandoned and discontinued service without the approval of the Commission. § 5 of the Act provides for the termination of a federal license for failure to comply with the terms of the Act. As already shown, § 3 authorizes the Secretary to determine the suitability of a federal warehouse for the storage of agricultural products. It thus appears that the Secretary is authorized to determine when a warehouse should be abandoned, and that such determination is enforceable by revocation of the license. The mere issuance of a federal license carries with it the representation of a determination by the Secretary that the warehouse is suitable for the storage of grain. Suppose the Commission should find that the same warehouse should be abandoned. We think this would present a direct conflict between the Secretary and the Commission. Suppose on the other hand that the warehouseman holding a federal license desires to abandon the service: Being under bond exclusively to the federal agent, he could only do so by satisfying the bond and surrendering his license. When that was accomplished, control would revert to the state and the Commission.

The complaint further charged the plaintiffs with charging unjust, unreasonable and discriminatory rates, operating without a state license and mixing public grain with grain of different grades. We have already referred to the authority of the Secretary concerning these matters and we need not discuss them further. It is sufficient to state that we are of the view that the Secretary has express authority over such matters and that any authority exercised by the state would be directly in conflict therewith.

Finally, plaintiffs were charged with having violated the Illinois Statute by failing to secure approval of the Commission of contracts with affiliates, with other public utilities and by failing to obtain authority to issue securities. While we find nothing in the Act which expressly relates to

such matters, we think, for the reasons already stated, that the Secretary has implied authority to deal therewith.

In our view, all of the matters charged in the Rice complaint, on which the Commission has assumed jurisdiction and is about to act, concern directly or indirectly the operation of federally licensed warehouses and the storage of grain therein for which receipts are issued. The allowance of such relief by the Commission on the charges thus made would conflict with the Warehouse Act or "plainly and palpably infringes its policy." The exercise of such authority by the Commission would thwart the primary purpose which Congress sought to accomplish. Thus viewing the situation it follows that the order appealed from must be, and is hereby, reversed, with directions to overrule the defendant's motion to strike the complaint and to proceed in accordance with the views herein expressed.

This brings us to a consideration of the appeal in No. 8897, which we think may be disposed of in rather short order. This is so, as we view the situation, because our conclusion in No. 8898 is largely and perhaps completely determinative of that which must be reached on this appeal.

The Board of Trade relies upon the Commodity exchange Act (§§ 1-17 (a), Title 7 U. S. C. A.) as conferring upon the Secretary of Agriculture exclusive jurisdiction of all regulatory authority over it and similar instrumentalities. The provisions of the Act as well as the rules and regulations promulgated under the authority contained therein are lengthy and we think it is not necessary to set them forth or discuss them in detail. It is sufficient to state that we have given them careful consideration and think that Congress intended and expressly provided for exclusive federal control and authority over the agencies to which the Act is applicable, including the Board of Trade.

As shown in our discussion of appeal No. 8898, the Commodity Exchange Act is closely related to the United States Warehouse Act; in fact, in some instances the provisions of the two Acts are overlapping. The gist of the Rice charge of which the Commission has assumed jurisdiction is:

> "The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Com-

mission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain Warehouse Act."

The relief prayed for before the Commission was:

"Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific."

Not only was the charge predicated upon § 194 (b) of the Illinois Grain Warehouse Act (Ill. Rev. Stats., 1941, Chap. 114, § 194 (b)), but is conceded that this is the sole provision which confers or purports to confer any authority in the Commission over the Board of Trade.

§ 194 (b) provides:

"No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective."

As we read this provision, the authority of the Commission is limited to (1) warehousing of grain in any public warehouse, (2) the custody of grain in any private warehouse, and (3) the use or negotiation of custodian's receipts for such grain. In short, it has to do only with the warehousing of grain and the use of warehouse receipts.

As we have shown in appeal No. 8898, the Secretary of Agriculture has exclusive authority over warehouse receipts, including the terms or contents thereof, as well as the storage of grain against which such receipts are issued and the warehouse in which such grain is stored. Again we call attention to § 5 (a) (7 U. S. C. A. Par. 7 (a) (7)) of the Commodity Exchange Act which provides that receipts

issued under the United States Warehouse Act "shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any state or enjoys other or different privileges than under state law." This provision, as we understand, makes it mandatory that the Board of Trade accept receipts issued under the authority of the United States Warehouse Act, even though the warehouseman is not licensed by the state.

It is plain, so we think, that any rule or regulation promulgated by the Board of Trade relative to its transactions in warehouse receipts must conform to and be consistent with the requirements of the federal authority in connection therewith. Any rule or regulation in conflict with or in excess of such authority would be invalid, and this would be so whether or not it was approved by the Illinois Commission. It is equally plain that any rule or regulation promulgated by the Commission concerning the same subject matter, which conflicted with or exceeded the power vested in the federal authority, would be of no effect. We therefore are of the view that Congress has invaded the precise field occupied by the Illinois Commission by reason of § 194 (b) of the Illinois Grain Warehouse Act and has rendered its authority inoperative.

It follows that the order appealed from must also be reversed as to the Board of Trade. It is so ordered, with directions to overrule the defendants' motion to strike the complaint and to proceed in accordance with the views herein expressed.

Endorsed: Filed June 7, 1946. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the seventh day of June, 1946, the following further proceedings were had and entered of record, to-wit:

Friday, June 7, 1946.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Charles G. Briggle, District Judge.

Board of Trade of the City of Chicago, a Corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, *et al., Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

8897

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said District Court with directions to overrule the defendant's motion to strike the complaint and to proceed in accordance with the views expressed in the opinion of this Court filed this day.

And afterwards, to-wit: On the fourteenth day of June, 1946, there was filed in the office of the Clerk of this Court, a designation of record, which said designation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1945, April Session, 1946.

Board of Trade of the City of Chicago, a Corporation, *Plaintiff-Appellant,* vs. Illinois Commerce Commission, *et al.*, *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

8897

DESIGNATION OF RECORD.

To: Honorable Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, 1212 Lake Shore Drive, Chicago, Illinois.

The following items constitute a complete record of all of the proceedings had and all of the evidence in the above entitled matter in the United States Circuit Court of Appeals for the Seventh Circuit and the undersigned requests you to make a transcript of the items designated to be filed as the record on appeal in the United States Supreme Court pursuant to the rules in such cases made and provided:

1. The entire printed record in the United States Circuit Court of Appeals for the Seventh Circuit.
2. Hearing May 8, 1946.
3. Opinion June 7th, 1946.
4. Judgment June 7th, 1946.

4-A. Order staying mandate.
5. Designation.

Dated June 14, 1946.

George F. Barrett,
Attorney General of the State of Illinois, Attorney for Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, and George F. Barrett, Attorney General of Illinois, Defendants-Appellees.

United States of America,
State of Illinois,
County of Cook. } ss.

William C. Wines, being first duly sworn upon his oath, deposes and says that he is an Assistant Attorney General in the office of George F. Barrett, Attorney General of the State of Illinois; that he has served a copy of the aforesaid designation upon all of the attorneys of record in the above entitled cause on June 14, 1946.

William C. Wines.

Subscribed and sworn to before me this 14th day of June, A. D. 1946.

Elizabeth P. Henderson,
(Seal) *Notary Public.*

PROOF OF SERVICE.

Received a copy of Designation of Record in the above entitled cause this 14th day of June, A. D. 1946.

Kirkland, Fleming, Green, Martin & Ellis,
Rooks & Freeman.

Endorsed: Filed June 14, 1946. Kenneth J. Carrick, Clerk.

And afterwards to-wit: On the seventeenth day of June, 1946, there was filed in the office of the Clerk of this Court, a designation of record, which said designation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

October Term, 1945, April Session, 1946.

Board of Trade of the City of Chicago, a Corporation, *Plaintiff-Appellant,* 8897 *vs.* Illinois Commerce Commission, *et al.*, *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

DESIGNATION OF RECORD.

To: Honorable Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, 1212 Lake Shore Drive, Chicago, Illinois.

On June 14, 1946, the Attorney General of the State of Illinois, on behalf of the Illinois Commerce Commission and its respective members, and George F. Barrett, Attorney General of the State of Illinois, defendants-appellees, filed with this court a designation of record.

Defendants-appellees Daniel F. Rice & Company, a partnership, and its individual partners, hereby respectfully join in, and adopt as to content, said designation of record of the Attorney General.

Daniel F. Rice & Company, a Partnership, and Its Individual Partners,
By Irvin Rooks,
Lee A. Freeman,
Their Attorneys.

United States of America,
State of Illinois,
County of Cook. } ss.

Lee A. Freeman, being first duly sworn, on oath deposes and says that he is one of the attorneys for defendants-appellees Daniel F. Rice & Company, a partnership, and its individual partners; and that he has served a copy of the aforesaid designation upon all of the attorneys of record in this cause on June 17, 1946.

Lee A. Freeman.

Subscribed and sworn to before me this 17th day of June, 1946.

M. E. Lalor,
Notary Public.

(Seal)

Endorsed: Filed June 17, 1946. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eighteenth day of June, 1946, the following further proceedings were had and entered of record, to-wit:

Tuesday, June 18, 1946.

Court met pursuant to adjournment.

Before:

Hon. J. Earl Major, Circuit Judge.

Board of Trade of the City of Chicago, a Corporation, *Plaintiff-Appellant,* 8897 *vs.* Illinois Commerce Commission, *et al.*, *Defendants-Appellees.*	Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.
Great Lakes Elevator Corporation, *et al.*, *Plaintiffs-Appellants,* 8898 *vs.* Illinois Commerce Commission, *et al.*, *Defendants-Appellees.*	

On motions of counsel for defendants-Appellees, Illinois Commerce Commission, *et al.*, and Daniel F. Rice & Company, it is ordered that the issuance of the mandates of this Court in these causes be, and the same are hereby, stayed for a period of sixty (60) days.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of proceedings had and papers filed as called for designations of record filed June 14, 1946 and June 17, 1946, in:

Cause No. 8897.

Board of Trade of the City of Chicago, a Corporation,
Plaintiff-Appellant,

vs.

Illinois Commerce Commission, *et al.*,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 28th day of June, A. D. 1946.

(signed) Kenneth J. Carrick,
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 471

ORDER ALLOWING CERTIORARI—Filed October 21, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 473

ORDER ALLOWING CERTIORARI—Filed October 21, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 471

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

IRVIN ROOKS,
LEE A. FREEMAN,

Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership.

CHAMPLIN-SHEALY COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No.

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

STATEMENT.

This petition is filed on behalf of Daniel F. Rice & Company, a partnership (hereinafter referred to as "Rice"), for the issuance of a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, reversing orders of the District Court of the United States for the Northern District of Illinois, Eastern Division, which granted motions to strike and dis-

miss a bill of injunction seeking to restrain members of the Illinois Commerce Commission and Rice from proceedings to hearings in a certain cause instituted by Rice before the Illinois Commerce Commission.

On July 28, 1944, Rice, a grain commission merchant, on behalf of its customers as grain producers, dealers and processors, filed a complaint with the Illinois Commerce Commission against public grain warehousemen in the Chicago terminal area, and against the Board of Trade of the City of Chicago (hereinafter "Board of Trade"). The complaint charged these warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions and of a constitutional requirement.[1]

The Board of Trade was joined as a defendant to the end that the improvement sought in warehousing practices could be in part achieved through Board of Trade rules and regulations. (Rec. 10-19)

A motion to dismiss the proceeding was filed with and denied by the commission, and the cause set for hearing commencing October 24, 1944. (Rec. 20-4) Thereupon, the Board of Trade filed a bill in the District Court of the United States to enjoin members of the commission and Rice from further prosecuting the proceeding before the commission. The injunction was sought on the ground that the federal government, by the Commodity Exchange Act (Tit. 7 U.S.C., Sec. 1 *et seq.*), has "completely occupied and

[1] The grain warehousemen sought an injunction in a separate proceeding. The injunction was denied by the District Court, but that court's order was reversed by the Court of Appeals. We are also seeking review of the Court of Appeals judgment in that companion case by separate petition simultaneously filed in *Illinois Commerce Commission, et al.*, v. *Great Lakes Elevator Corporation, et al.* The issues presented by that phase of the case are fully set forth in our companion petition for writ of certiorari.

preempted the field of regulation of boards of trade", and thereby superseded and nullified the Constitution and all laws of Illinois or regulations of the Illinois Commerce Commission with respect to the operation of the Board of Trade. (Rec. 6, 7) Motions to strike the complaint and dismiss the proceeding were filed by the Attorney General of Illinois and by Rice. (Rec. 212-20) Such motions were allowed, and an order was entered by the District Court on June 26, 1945, dismissing the complaint. (Rec. 223-5)

Appeals were taken to the Circuit Court of Appeals for the Seventh Circuit, and on June 7, 1946, that court reversed the District Court with directions to overrule the motions to strike the complaint.

Jurisdiction.

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on June 7, 1946. (Rec. 242) The jurisdiction of this court is invoked under Section 240 of the Judicial Code of the United States, as amended. (Tit. 28 U.S.C., Sec. 347) The validity of Section 194b of the Illinois Grain Warehouse Act is attacked on the ground of alleged repugnance to a federal statute.

The federal statute involved is the Commodity Exchange Act. The state provision which is sought to be invalidated is Section 194b of the Illinois Grain Warehouse Act (Ill. Rev. Stats. (1945) Ch. 114, Sec. 194b), which reads as follows:

> "No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or

regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective.

Questions Presented.

1. Is the state requirement of prior state commission approval of rules and regulations of the Board of Trade which relate to the warehousing or custody of grain, in irreconcilable conflict with the limited and circumscribed control of boards of trade provided by the Commodity Exchange Act?

2. The Circuit Court of Appeals for the Seventh Circuit erred in holding that by the Commodity Exchange Act Congress intended and expressly provided for exclusive federal control and authority over the Board of Trade.

3. The Circuit Court of Appeals for the Seventh Circuit erred in holding that Congress, by the Commodity Exchange Act, has invaded the precise field occupied by the Illinois Commerce Commission by reason of Section 194b of the Illinois Grain Warehouse Act, and has rendered that state authority inoperative.

4. The Circuit Court of Appeals for the Seventh Circuit erred in reversing the order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Reasons for Granting the Writ.

The questions of law here presented are of great public importance. Federal questions of substance are presented which have not heretofore been determined by this court.

This is a case of first impression. No court has previously passed upon the validity of state regulation of rules of boards of trade in the face of claimed repugnance to the Commodity Exchange Act.

The Board of Trade is one of the commodity exchanges which has been designated by the Secretary of Agriculture under the Commodity Exchange Act as a contract market. Limited controls over excessive speculation and manipulation of trading in commodities and futures on the Board of Trade are thus achieved. The Board of Trade, however, promulgates rules and regulations establishing warehousing standards and practices. For example, Rule 1620 fixes maximum storage rates. (Rec. 155). Rule 1626 requires warehouses to provide modern improvements and appliances. (Rec. 156) Rule 1621A provides for guarantees of warehouse receipts by affiliated companies. (Rec. 155) Rules 1230 through 1242 provide regulation of the custody of grain in private elevators. (Rec. 139-143) The Board of Trade thus achieves a degree of regulation apart from government. These rules and regulations are not subject to the approval or control of the federal administrative agencies acting under the Commodity Exchange Act. The Illinois Commerce Commission, a state public utility regulatory body, by Section 194b of the Illinois Grain Warehouse Act, has been delegated specific authority with respect to rules and regulations so promulgated. That section provides in part that no rule of the Board of Trade:

> "• • • which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, • • •."

If the judgment of the Circuit Court of Appeals is allowed to stand, the state control of such rules and regulations as an exercise of police power would be invalidated, without judicially raising comparable authority at the federal level. Substantial questions involving the interrelationship and harmonization of state and federal authority are here involved.

The Circuit Court of Appeals for the Seventh Circuit has misconceived the doctrine of supersedure and the scope and import of the Commodity Exchange Act. No demonstration of irreconcilable conflict was made. The judgment was reached on the ground of occupancy of the precise field, although the federal statute does not require approval of warehousing rules of the Board of Trade, and such federal authority has not been claimed by counsel.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

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LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership.

September 4, 1946.

BRIEF IN SUPPORT OF PETITION.

The Attorney General of Illinois has prepared a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, and a brief in support thereof, and has filed that petition and brief in this cause.

We are privileged to have read the petition and brief of the Attorney General, and we hereby adopt the brief thus filed as our argument in support of the granting of this petition.

IRVIN ROOKS,
LEE A. FREEMAN,
Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership.

September 4, 1946.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 4

ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL.,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION OF ILLINOIS COMMERCE COMMISSION, ET AL., FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No.

ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL.,

Petitioners,

VS.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Summary and Short Statement of the Matters Involved.

Petitioners, who are the Illinois Commerce Commission, its members, and the Attorney General of Illinois, seek two writs of *certiorari* from this court to review two judgments of the United States Circuit Court of Appeals for the Seventh Circuit in two companion cases, *Great Lakes Elevator Corporation, et. al.*, v. *Illinois Commerce Commission, et al.*, and *Board of Trade of the City of Chicago, a corporation*, v. *Illinois Commerce Commission, et al.*,

which were decided by that court in a single opinion although a separate judgment was rendered in each case.[1]

In the *Great Lakes* case the Circuit Court of Appeals, reversing a decision by Judge Igoe of the District Court for the Northern District of Illinois, held that the United States Warehouse Act, as amended,[2] so far constituted a "preemption of the field" of the regulation of grain warehouses voluntarily licensed under the federal act as to supersede Illinois constitutional provisions and Illinois statutes, cited and summarized under the statement of jurisdiction *post*, which concededly regulated such warehouses prior to the intervention of the Federal Act in question.

In the *Board of Trade* case the Circuit Court of Appeals, reversing Judge Igoe's decision in the District Court, held that the United States Commodity Exchange Act[3] similarly implied supersedure of Illinois statutory provisions which before the advent of the Commodity Exchange Act had concededly been applicable to the Chicago Board of Trade insofar as was necessary to affect the

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(1) Since the same opinion decides both cases and since some of the issues are identical while the other issues, although distinct in the two cases, are so similar and so intimately related that they must be considered comparatively, we file an identical petition and an identical brief in both cases.

Daniel F. Rice and Company, which was a co-defendant below with the instant petitioners and whose interests will hereafter appear, is presenting independent petitions for certiorari concurrently with our presentation of the instant petitions. We have been privileged to see a draft of Rice's petitions and supporting briefs and shall avoid needless duplication of statement and argument as far as possible; but we earnestly present certain contentions which Rice and Company do not press or do not conceive as we conceive them and therefore we cannot join in their petitions.

The Attorney General was not formally impleaded as a defendant in the *Board of Trade* case and so technically is not a party petitioner in that case.

(2) The United States Warehouse Act, as amended, (Tit. 7, U. S. C. A. Secs. 241 *et seq.*

(3) United States Commodity Exchange Act, (Tit. 7, U. S. C. A. Secs. 1 *et seq.*) The full text of the Act appears as Appendix IV hereto.

Board's activities incidentally to the matters concerning warehouse receipts.

Each judgment sustained a complaint to enjoin the Illinois Commerce Commission from continuing pending investigation or regulation of practices of federally licensed warehousemen although such proceedings had not culminated in any final order on the part of the Commission and although the plaintiff (respondent here) had not sought admittedly available statutory or equitable remedies in the courts of Illinois.

The subject matter of the Illinois Commission's investigation and contemplated regulation was warehouse rates, alleged discriminatory practices, the commingling of proprietors' grain with that of customers', public warehouse service and facilities, warehousemen's financing, issuance of securities and capital structure, transactions with affiliated and other utilities, and kindred matters. These activities are concededly not fully and actually regulated at the present time either by the federal act in question or by regulations promulgated under it; nor does either federal act expressly void state laws and powers.

Some of these phases of activity (*e.g.*, financing, securities and capital structure) are not even subject to the authority of the Secretary of Agriculture under any language appearing in the federal act. As to other matters, such as some aspects of service and facilities, the Secretary has authority under the Act to take administrative action that could be inconsistent with orders that the Illinois Commission might make; but no conflict of regulation has as yet arisen, so that there is only a potential and not an actually precipitated conflict between possible future state and federal directives. With respect to the very important matter of rates, the situation is (*Brief, post*) that the Secretary has *no* express author-

ity to *prescribe* rates but *does* have authority to *disapprove* rates even though they have been installed by a state commission. [Of course we concede that in the case of an actual conflict between a state order or regulation and a valid order or regulation by the Secretary of Agriculture, whether with respect to rates or other matters, the latter would prevail.]

The Commodities Exchange Act does not provide for the general and comprehensive regulation of grain exchanges. (See *Brief, post.*)

The Circuit Court of Appeals was of the view, which is challenged here, that the federal legislation in question evinces a congressional intention to supersede state regulatory process with respect to the matters indicated above, both as to activities which the Secretary may regulate but has not regulated and as to matters which he has no authority to regulate, it being that Court's view that there was an implied preemption of the field by total occupation.

The Circuit Court of Appeals also rejected the petitioners' contentions that plain, speedy and adequate remedies existed in the state courts for the vindication of any rights that the respondent (plaintiff) had, that therefore federal jurisdiction would not have been exercised even before the Johnson Act Amendment[4] to the Federal Code, and that the District Court's jurisdiction over the instant cases is specifically withdrawn by that amendment as well as petitioners' contention that even before the Johnson Act, the exercise of federal jurisdiction should have been forborne because state remedies had not been exhausted.[5]

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(4) Johnson Act, Sec. 24(1) Judicial Code (Tit. 28, USCA, Sec. 41(1) (quoted in full in the Brief, *post*, Point I).

(5) Petitioners also contended below that respondent invoked the federal constitution as nullifying state legislation and therefore a three judge court should have been convoked. But that contention is abandoned here because further study has shown it to be probably

The foregoing is deemed a sufficient "Summary and Short Statement of the Matter Involved" to indicate the nature and importance of the questions presented, which questions are stated below. The histories of the cases are more fully narrated in the brief in support of these petitions.

The Questions Presented.

The decision of jurisdictional questions must logically precede a consideration of the merits. But where jurisdiction to decide the substantive questions depends upon whether the nature of those questions is such that the court has jurisdiction to entertain them, the substantive questions must necessarily be stated first.

The Substantive Questions.

The ultimate substantive questions sought to be presented are logically inseparable and composite. They may be stated as follows:

Do the Federal Warehouse Act and the Commodity Exchange Act impliedly so far "preempt the field" of federal warehouse regulation that the Illinois Commerce Commission may no longer regulate (or even investigate with a view to regulation) federally licensed warehouses with respect to rates, alleged or actual discriminatory practices, the commingling of proprietors' grain with that of customers', service and facilities, securities, financing and capital structure, transactions with other utilities and similar matters, and may no longer approve or disapprove rules or regulations of the Chicago Board of Trade affecting federally licensed warehouses?

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not well conceived and in any event, now that the Circuit Court of Appeals has decided the case, nothing would be gained by insisting, even successfully, upon a remandment to the lower court only to bring this case before this court at a later date.

Dependent upon the ultimate issues stated above and directly implicit in them is a more specific but very important question that may be stated as follows:

Certain provisions under the Federal Warehouse Act and fully discussed in Rice & Company's brief provide in effect that *if* federally licensed warehousemen issue negotiable warehouse receipts for grain owned by them and stored in their warehouses, such warehouse receipts shall conform to certain regulations. But neither the federal act nor federal regulations promulgated thereunder expressly authorize federal licensees to store their own grain in their own warehouses or issue receipts therefor under any circumstances or conditions at all. The practice is legal in some states but illegal under the constitution of Illinois. Do the federal regulations which prescribe only *how* such receipts shall be issued *if* they may be issued legally under state laws intend by implication that such receipts *may be issued under federal authority notwithstanding state prohibition?*

The Jurisdictional Questions.

The jurisdictional questions are:

Inasmuch as it was conceded that adequate remedies existed at law or in equity in the state courts, was federal equitable jurisdiction inhibited by the Johnson Amendment to the Judicial Code?

Even apart from the Johnson Act, should equity have forborne the exercise of jurisdiction because state remedies were not resorted to?

Statement Particularly Disclosing the Basis Upon Which It Is Contended That This Court Has Jurisdiction to Review.

This court's jurisdiction is invoked under Section 240 of the United States Judicial Code (Title 28, U. S. C. A.,

Sec. 347). The validity of Illinois constitutional provisions and statutes in the presence of federal statutes as applicable to the facts in the instant cases is involved.

The federal statutes involved are the United States Warehouse Act, the Federal Commodity Exchange Act and those provisions of the Judicial Code granting, recognizing and limiting the jurisdiction of district courts (*Cited Ante*). The state constitutional provisions involved are Article XIII of the Illinois Constitution, which is wholly devoted to warehouses. The state statutes involved are the Illinois Public Utilities Act, the Illinois Grain Warehouse Act, the Illinois Warehouse Receipts Act. Official citations of these acts appear in the margin[6] with references to appendices to this petition in which some of the shorter acts are quoted in full. The Illinois Public Utilities Act empowers the Illinois Commission to regulate rates, services, facilities, financing and inter-utility transactions. See Brief, *post*, where its provisions are summarized to the extent necessary for argument and decision of the substantive issues if there is jurisdiction to decide them at all in these cases.

Reasons Relied Upon for the Allowance of the Writ.

The reasons relied upon as sufficient to invoke this court's writs of *certiorari* are that these cases present very important questions which have not been but should be decided by this court and that although the questions presented are of first impression here, nevertheless the decisions of the Circuit Court of Appeals are probably in

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(6) Illinois Constitution of 1870, Art. XIII, Ill. Rev. Stats. 1945, p. 31. (Appendix I.) This constitutional provision has been held to prohibit the commingling of grain owned by a warehouseman with grain owned by his customers. *Hannah* v. *People*, 198 Ill. 77.
Illinois Public Utilities Act, Ill. Stats. 1945, Ch. 111 2/3, pp. 2607-2668.
Illinois Grain Warehouse Act, Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a, pp. 2714-2718. (Appendix II.)
Illinois Warehouse Receipts Act, Ch. 114, pars. 233-292, pp. 2709-2714. (Appendix III.)

conflict with the teachings of this court's decisions most nearly in point. (See *Brief*, Points III and IV, *post.*).

Comment in emphasis of the great moment of the issues presented appears to be unnecessary but will be found in the separate petitions and briefs of Rice and Company.

The Circuit Court of Appeals, quoting averments from respondent Board of Trade's complaint, said:

> "The grain market at Chicago is the world's largest grain market. * * * Over 90% of the trade in grain futures contracts in the United States was transacted at the said market on the said Board of Trade, * * *." (*Great Lakes case*, Tr. 108; *Board of Trade case*, Tr. 244.)

The probable conflict between the decisions under review and this court's applicable decisions will appear from the brief in support of this petition and from the brief in support of Rice and Company's petition in the *Great Lakes* case.

Prayer for Certiorari.

Wherefore, petitioners pray that this court grant its writ of *certiorari* to review the judgment of the Circuit Court of Appeals in the case in which this petition is entitled.

ILLINOIS COMMERCE COMMISSION and JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE, and VAL J. WASHINGTON, members of said Commission,

Petitioners.

By GEORGE F. BARRETT,
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Attorney for Petitioners.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

BRIEF IN SUPPORT OF THE FOREGOING PETITION.

STATEMENT OF THE CASE.

Daniel F. Rice & Company is a grain commission partnership and is a co-petitioner by separate applications for *certiorari* in these cases.

On July 28, 1944, Rice & Company filed a complaint with the Illinois Commerce Commission against public grain warehousemen in the Chicago terminal area. Because of Illinois statutory provisions, which confer jurisdiction upon the commission over rules and regulations of the Chicago Board of Trade insofar as such rules and regulations apply to warehousemen, the Board of Trade was joined as a party.

This petition charged the warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating with inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions, and with violation of an Illinois constitutional requirement forbidding warehousemen to store and issue receipts against their own grain in their own warehouses. It prayed an investigation in the premises and the entry of orders which would fix just and non-discriminatory rates, would eliminate discriminatory practices with respect to commingling of grain, would forbid arbitrarily preferential grain transactions, and would prohibit the manipulation and rebating of grain storage charges, preferential allocation of storage space, discriminatory delaying of the loading out of customers' grain to further the sale of the warehousemen's own grain, and similar unfair activities.

The petition further prayed administrative action which would insure reasonable, adequate and safe service and facilities. It also invoked the commission's state statutory jurisdiction over warehousemen's issuance of securities, financial operations and contracts with other utilities. (*Petition of Rice & Co. to Illinois Com. Com., Great Lakes* case, Tr. 16-24; *Board of Trade* case, Tr. 10-19.)

Motions to dismiss the proceedings were filed with the commission (*Great Lakes* case, Tr. 25-26; *Board of Trade* case, Tr. 20-24) and were denied (*Great Lakes* case, Tr. 27-28; *Board of Trade* case, Tr. 6.)

Thereupon several of the warehousemen who are licensed under the Federal Warehouse Act filed their complaint in the *Great Lakes* case in the District Court for the Northern District of Illinois (*Great Lakes* case, Tr. 2-15). The Board of Trade also filed its separate complaint in that court (*Board of Trade* case, Tr. 3-9).

Petitioners filed motions to dismiss in the nature of demurrers in each case (*Great Lakes* case, Tr. 40-42; *Board of Trade* case, Tr. 214-216), challenging the jurisdiction of federal equity because respondents had not resorted to admittedly available state statutory equitable remedies and, on the merits, resisting respondents' contentions that the federal legislation in question superseded Illinois constitutional, statutory and administrative authority in the premises.

The District Court overruled respondents' jurisdictional contentions but sustained their substantive contentions, held in each case, that there was no repugnance between state and federal law and dismissed both cases. (*Great Lakes* case, Tr. 88-93; *Board of Trade* case, Tr. 220-225.)

Respondents appealed to the Circuit Court of Appeals for the Seventh Circuit. In that court Rice & Company,

having won a victory on the merits and presumably not having the same interest that the Illinois Commission and the Attorney General have as a matter of policy in questions of federal equity jurisdiction over state agencies, failed to join the instant petitioners in their renewal in the Circuit Court of Appeals of the jurisdictional contentions. The instant petitioners reasserted in that court the contention that federal equity jurisdiction did not exist or that its exercise should have been forborne because admittedly adequate state remedies were not exhausted. Both Rice & Company and the instant petitioners argued that, if the District Court had jurisdiction to decide the case at all, its decision on the merits that state regulation had not been superseded was correct and should be affirmed. As has been indicated in the opinion, *ante*, the Circuit Court of Appeals sustained the District Court's jurisdiction but, also sustaining respondents' contention that federal acts in question superseded state authority, reversed the District Court on the merits.

These petitions for *certiorari*, as well as the companion petitions by Rice & Company, follow.

The facts pertinent to the question as to repugnancy of state and federal legislation, insofar as those facts appear in the pleadings or are properly the subject of judicial notice, are more appropriately considered in the Argument.

ARGUMENT.

I.

The Federal District Court Lacked Jurisdiction Over this Complaint Because of the "Johnson Act Amendment" to the Judicial Code. Even Apart From the Provisions of That Amendment and If Jurisdiction Technically Existed, Its Exercise Should Have Been Forborne.

Section 24(1) of the Judicial Code (Title 28 U.S.C.A., Section 41(1)) was amended in 1934 by the act known as the Johnson Amendment. It now provides as follows:

> "• • • Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any ratemaking body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing **and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state.** * * *" (Emphasis supplied.)

The commission proceedings which this suit seeks to enjoin involve "rates chargeable by a public utility" and the order initiating such proceedings has been made "after reasonable notice and hearing." The proceedings being

merely investigatory, they do not interfere with interstate commerce.

There can be no doubt that plain, speedy, adequate and efficient remedies exist in the courts of Illinois.

Section 68 of the Illinois Public Utilities Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 72), the pertinent provisions of which are quoted in the margin,[7] confers statutory power on the circuit and superior courts of Illinois to review administrative actions of the Illinois Commerce Commission.

Section 70 of the Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 74) provides that such statutory proceedings for review "shall have priority in hearing and determination over all other civil proceedings pending in such court, excepting election contests." Section 71 of the Act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 75) provides that such court "may stay or suspend, in whole or in part, the operation of the Commission's rule, regulation, order or decision."

Thus there is an expeditious and adequate statutory mode of review. But in the rare case where this review might not be adequate or efficient to prevent confiscation, denial of due process or other serious injury, utilities have the classical remedy in equity by temporary and permanent injunction.

In *Peoples Gas, Light & Coke Co.* v. *Slattery*, 373 Ill. 31; and in *Sprague, et al., Trustees of Chicago Rapid Transit*

(7) "Within thirty days after the service of any order or decision of the Commission refusing an application for a rehearing of any rule, regulation, order or decision of the Commission, or within thirty days after the service of any final order or decision of the Commission upon and after a rehearing of any rule, regulation, order or decision of the Commission, any person or corporation affected by such rule, regulation, order or decision, may appeal to the circuit or superior court of the county in which the subject-matter of the hearing is situated, or if the subject-matter of the hearing is situated in more than one county, then of any one of such counties, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined. • • •."

Co. v. *Biggs,* 390 Ill. 537, the Supreme Court of Illinois held that the statutory review could not supersede the general equitable remedy of injunction in view of the provisions, not only of the Illinois and federal due process clauses, but of Section 12 of Article VI of the Illinois Constitution of 1870. That provision confers "original jurisdiction" in all law and equity cases upon circuit and superior courts. In the *Peoples Gas Co.* case, cited above, the court said that in Illinois "The legislature cannot validly limit those powers" (*i.e.,* the constitutional plenary powers of equity inherited from English chancery). In other words, in addition to a statutory remedy which must take precedence over all cases except election contest cases, respondents had a right under the Illinois constitution to *exactly the type of equitable remedy which they sought in the federal courts.*

There being no doubt that the instant cases were "suits to enjoin, suspend or restrain the enforcement, operation or execution of" an "order of administrative board or commission of a state" which "affects rights chargeable by a public utility," interstate commerce not being involved by a mere investigation, and there being no question that "a plain, speedy and efficient remedy may be had at law or in equity" in the courts of Illinois, this proceeding was categorically, peremptorily and absolutely interdicted by the Johnson Act.

This appears to be so plain and so simple that we do not argue the point further.

But even before the Johnson Act, this court specifically held that a utility had no right to invoke federal equity to prevent a mere investigation by a state commission. In *Natural Gas Pipeline Co.* v. *Slattery,* 302 U. S. 300, this court, speaking through Mr. Justice Stone, held, even

before the Johnson Act, that a public utility had no right to enjoin the Illinois Commerce Commission from an investigation of its accounts, *even though it was charged the utility was not subject to the Illinois Commission's jurisdiction in any respect and that submission to the investigation would unconstitutionally interfere with interstate commerce and afflict it with grave and irreparable injury.*

In view of the positive diction and unmistakable meaning of the Johnson Act, which inhibits federal equity suits affecting public utility rates where "a plain, speedy and efficient remedy may be had at law or in equity" in the state courts, the instant petitioners earnestly insist, notwithstanding the holding of the District Court and the Circuit Court of Appeals, that those courts were without jurisdiction to entertain this case or decide it upon the merits or should have forborne the exercise of jurisdiction.

II.

Even If Federal Equity Has No Jurisdiction, This Court May Decide the Case Upon the Merits Adversely to Respondent; and This Is True Even Though It May Not Decide the Case Favorably to It.

Of course, this court need not decide the substantive question of repugnancy if it accedes to the instant petitioners' contention, urged under Point I, *ante*, that the Johnson Act inhibits jurisdiction of these cases. But even if this court sustains that contention or does not pass upon it, there is precedent in this court's decisions for pronouncement of a decision on the merits *provided that such decision is adverse to the plaintiff.*

In *Wood* v. *Broom*, 287 U. S. 1, this court had occasion to consider a suit asserting rights under an act of Congress

and seeking to restrain a congressional election. The defendants contended both that federal equity was without jurisdiction and that the plaintiffs' cause rested upon a misconception, pertinent to the substantive merits and not pertinent to jurisdiction, concerning the intent of Congress with respect to congressional elections. A majority of this court held that since they agreed with the defendants that the plaintiffs had no substantive rights, they would not pass upon the question of whether, had such rights existed, equity would have been impotent to vindicate them because of lack of jurisdiction. Thus the Court decided the substantive question adversely to the plaintiffs although it recognized a jurisdictional question that it declined to decide.

Following this decision, Mr. Justice Frankfurter's opinion in the case of *Colegrove* v. *Green*, 66 S. Ct. 1198, held that federal equity was powerless to enforce rights claimed by certain Illinois electors but also held that they had no such rights as they claimed. In other words, in *Wood* v. *Broom* a majority of the court, and in *Colegrove* v. *Green* a majority of the justices concurring in the court's judgment, held that jurisdictional questions need not be reached where it appears that even if jurisdiction existed, the plaintiffs do not have the substantive rights that they claim.

But the converse is obviously not true. A court may *refuse* relief as well for lack of substantive merit as for jurisdiction. But before it may *grant* relief, not only must the case possess merit warranting such relief but jurisdiction to grant it must likewise exist.

In short, this court may, consistently with its precedents, reverse the Circuit Court of Appeals either because (A) it holds that the lower courts had no jurisdiction and therefore this court will not pass on the merits, (B) be-

cause it holds that respondent's contentions are without substantive merit and therefore need not consider the jurisdictional question, or (C) both because, as a majority of the justices concurring in opinion held in the *Colegrove* case, the lower courts had no jurisdiction and because there is no substantive merit in respondents' contention. But in order to affirm the Circuit Court of Appeals, it must decide both that the lower courts had jurisdiction and that respondents are right upon the merits.

III.

There Is No Repugnancy Between the Federal Warehouse Act and the Law of Illinois.

Before citing and arguing the intendment of this court's decisions which we deem most incisively pertinent in this case, we briefly consider, without argument other than that implied by terms of comparison and contrast, the federal and state laws involved.

COMPARISON AND CONTRAST OF THE SCOPE AND SUBSTANCE OF THE STATE AND FEDERAL LAWS IN QUESTION.

Grain warehousemen are subject to comprehensive regulation under Illinois constitutional and statutory provisions.

The whole of Article XIII of the Illinois Constitution of 1870 is devoted to warehouses. Its full text is reprinted as Appendix I. After defining all elevators or storehouses where grain "is stored for a compensation, whether the property stored be kept separate or not," declaring them to be "public warehouses" (sec. 1), it provides for the posting of sworn statements as to the amount and grade of each kind of grain stored, that warehouse receipts have been issued and are outstanding, and other infor-

mation (sec. 2). It gives the holders of warehouse receipts the right "always" to examine the properties stored (sec. 3). It provides that common carriers shall weigh or measure grain on receipt for the full amount and be responsible for the delivery of such full amount (sec. 4) and contains provisions requiring railroad companies to furnish facilities to warehouses (sec. 5). It makes it the duty of the General Assembly to pass all necessary laws to prevent the issuance of false or fraudulent warehouse receipts and to give full effect of this article of the constitution, which "shall be liberally construed so as to protect producers and shippers" (sec. 6). It provides that the General Assembly "shall pass laws for the inspection of grain, protection of producers, shippers and receivers of grain and produce" (sec. 7), and that the article shall not be construed to deny the General Assembly "the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies" (sec. 6). These provisions have been construed as prohibiting the commingling of a warehouseman's own grain with that of his customers. (*Hannah* v. *People,* 198 Ill. 77.)

The Illinois Grain Warehouse Act is reproduced in full as Appendix II. (Ill. Rev. Stats. 1945, Ch. 114, pars. 293-326a.) Its provisions are summarized in the margin.[8]

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(8) After providing for the creation of local supervisory boards (secs. 2-5) it provides for official sealers who must supervise the storage of grain, ascertain the amounts stored by each owner, determine the exact grade and quality of the grain, ascertain that the "bin crib, granary or other receptable in which the grain is stored is satisfactory for the storage of grain, and that such receptable conforms to the regulations applicable thereto promulgated by the Department of Agriculture" (secs. 6, 7), and perform incidental functions prescribed by the act. Sections 12 and 13 define non-negotiable and negotiable certificates. Sections 14-19, which may be read at length in the appendix, contain provisions contended to protect the holders of such certificates against loss by destruction, deterioration or theft of grain, which is subject to such certificates. Other provisions deal with "group ownership," a device whereby several producers may pool their grain and obtain group certificates. Still other provisions have to do with the fraudulent issuance of certificates, issuing of duplicate certificates, delivery of grain while a certificate is outstanding, transfer or mortgaging of grain after issuance of securities, and application of the Warehouse Receipts Act.

The Illinois Warehouse Receipts Act is printed in full as Appendix III (Ill. Rev. Stats. 1945, Ch. 114, pars. 233-292). It is summarized in the margin.[9]

The Illinois Public Utilities Act under which the instant petitioners seek to conduct the investigation which the Circuit Court of Appeals says must be restrained, is too long to be reproduced in full. Pertinent provisions are summarized as follows:

Section 10 of the act (Ill. Rev. Stats. 1945, Ch. 111⅔, par. 10) defines as a public utility any person, including a corporation, which shall conduct a business "for the storage or warehousing of grain."

This statute gives the commission the broad regulatory powers that are usual in the case of modern administrative superintendence of state public utilities. Among the powers conferred upon the commission are those of fixing rates (sec. 41), regulating service and facilities (sec. 49), the supervising and approving of financing and issuance of securities (sec. 20), regulation of transactions with subsidiaries, affiliates and other public utilities (sec. 27), investigation (sec. 60), supervision of accounts (sec. 11), and, to speak more generally, jurisdiction over the conduct of the grain warehousing business (secs. 8-10).

No such comprehensive regulation of federally licensed

(9) This is a comprehensive warehouse receipts negotiable instrument act. After prescribing the contents of such certificates, it reenacts the provisions of the Grain Warehouse Act with respect to what certificates are non-negotiable and what certificates are negotiable (the distinction is as to whether the goods are deliverable "to the depositor or to the bearer or to the order of any person named in such receipt"). This act provides for duplicate receipts which are non-negotiable shall be so marked. It requires and authorizes the delivery of goods upon due presentation of the receipt, contains provisions imposing liability for conversion, authorizing the commingling of fungible goods and makes the ownership of such goods ratable tenants in common of the commingled mass, previous attachment or levy unless negotiable receipts are surrendered, gives a lien for storage charges, and contains provisions with respect to negotiation and transfer of receipts and the rights of mesne and ultimate holders thereof.

warehouses appears to have been envisioned by Congress in enacting the Federal Warehouse Act. In the first place, federal licensure is purely voluntary. Conceivably Congress might have intended that those who elected to comply with the federal act should thereby become immune from state regulation, thus leaving it optional with individual warehousemen to determine whether they wished to be under state or federal regulation, but such an intent would appear to be so inconsistent with any rationally conceived purpose comprehensively and fully to regulate the grain warehousing business that it should not be inferred in the absence of a clear expression, particularly when it would have been so very easy for Congress to have inserted such a provision in the Act if it had intended any such result.

As originally enacted, section 29 of the Federal Warehouse Act reads as follows:

> "* * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *."

In 1931 section 29 was amended to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

The Circuit Court of Appeals divined from this change of language an implication of congressional intention to supersede all state regulatory authority. Indeed, the respondent's case was necessarily conceived upon imputing such an effect to this language, since under the original version of the Act it was expressly provided that it should not "conflict with * * * or limit the effect or operation of the laws of any state relating to warehouses."

But since petitioners contend that, as this court said in *United States* v. *Hastings*, 296 U. S. 188, 199:

> "* * * The amendment of 1931, with respect to conflict with the operation of state laws, does not militate against this limitation, for while the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act * * *,"

we continue our analysis of the federal act without argumentative comment at this point in order to ascertain to what this court must have referred when it spoke in the language above quoted of "the authority conferred by the Act."

Although the federal act does permit the Secretary of Agriculture to strike down discriminatory and unreasonable rates, it does not express any grant of authority to him to conduct hearings and fix such rates. Indeed, such authority might well be of little practical value; for he could not fix rates for non-licensed warehouses and therefore could not achieve any integrated or coherent rate pattern for the nation's warehouse utilities.

We do not depart from the task of comparative analysis of the act involved when we observe in passing that although the last fifteen years have seen an unprecedented trend toward federal price control and regulation of business, Congress has provided no machinery whereby the

Secretary of Agriculture may hold hearings such as those that have traditionally been held in the field of public utility rate making.

The Act provides for no judicial review of any rate structure that the Secretary of Agriculture might impose. Hence we conclude that it is not intended that he shall impose any such general structure. Although the trend of the times is toward more, not less, control over the financing and capitalization of business, this Act contains no provision authorizing the Secretary of Agriculture to superintend the issuance of securities or other financing operations. If federally licensed warehousemen escape state supervision of their financing, without submitting themselves to federal supervision, the result is in diametrical opposition to the entire tendency of recent congressional policy.

As pointed out in more detail in the brief of Rice & Company in support of its petition in the *Great Lakes* case, the Act confers no authority to issue general regulatory orders and directives, no requirements for the making of findings of fact by the Secretary, no legislative standards governing administrative policy, no general power to conduct hearings and no provision for rehearings or for judicial review.

A.

CANONS GENERALLY APPLICABLE TO THE QUESTION OF IMPLIED CONGRESSIONAL SUPERSEDURE OF STATE AUTHORITY.

This court said in *Railway Mail Association* v. *Corsi*, 326 U. S. 88, 97:

> "Congress must clearly manifest an intention to regulate for itself • • • before the police power of the state is powerless."

This general precept and doctrine is so well settled that we do not extensively quote authorities in support of it. They will be found at some length, however, in the brief of Rice & Company in the *Great Lakes* case. (See *Illinois Central Railroad Co.* v. *Commission*, 245 U. S. 493, and *Reid* v. *Colorado*, 187 U. S. 137, for recognition of this general principle.)

One serious fallacy that permeates the opinion of the Circuit Court of Appeals in the instant case is its view that federal authority to promulgate regulations which *may* conflict with existing or future state regulations constitutes *per se* such an exertion of congressional authority as to preempt the field in which such a potential conflict may arise.

But this court has held otherwise. In *Northwestern Bell Telephone Co.* v. *Nebraska*, 297 U. S. 471, the relevant act of Congress not only gave the Interstate Commerce Commission authority in its discretion to prescribe uniform system of accounts for telephone companies but *made it unlawful for them to keep any accounts other than those prescribed by the commission.* This court said at page 480:

> "No exertion of federal authority • • • forbids the making of entries in appellant's accounts or the doing of anything that is by the state commission's order directed to be done. Pending action by the Communications Commission establishing depreciation rates for telephone companies, state control over such rates remains unimpaired."

Another case which is cogently pertinent and which the Circuit Court of Appeals does not even cite, although petitioners relied upon it heavily in that court and as they do here, is *Terminal Railroad* v. *Brotherhood Trainmen*, 318 U. S. 1. In that case the Illinois Commerce Commission

had entered an order requiring the interstate railroad to put cabooses on interstate trains. Not only did the Interstate Commerce Commission clearly have authority to enter an order inconsistent with and superseding the Illinois order, but the court assumed without deciding "that the demand for additional caboose service and its refusal constitute dispute about working conditions and that the National Railroad Adjustment Board would have jurisdiction of it on petition of the employees or their representative." Here, then, were not one but two separate acts under either of which the federal government might have promulgated an administrative regulation in conflict with the Illinois regulation. Nevertheless the Illinois regulation was sustained.

We submit that once it is perceived that the opinion of the Circuit Court of Appeals rests upon the fallacious assumption that mere potential repugnance of administrative action is enough to evince a preemption of the field and a nullification of state acts, that opinion, notwithstanding the prestige of the experienced and distinguished court that pronounced it, should invite *certiorari* from and reversal by this court.

Another consideration that must seriously compromise the authority of the opinion now under review is the following: The scope of the investigatory and potentially regulative process of the Illinois commission in the instant case was broad and general. The Circuit Court of Appeals strips the Illinois commission of *all* regulatory authority over federally licensed warehousemen. Now it is a matter of state, not of federal, concern how Illinois bestows or distributes its police power if police power exists. How far is the Illinois commission, and therefore the State of Illinois, disabled from regulating licensed

granaries under the Circuit Court of Appeals decision? Is a federally licensed and approved warehouse subject to Illinois' fire laws? Is it subject to her zoning ordinances, or a power in the Illinois commission to consider zoning policy in approving its operation in a given manner at a given location? If securities that it desires to issue are not subject to the Commerce Commission, are they subject to the provisions of the Illinois Blue Sky Law? How far may Illinois regulate transactions between licensed and unlicensed warehousemen? (Such a question is fairly within the scope of the inquiry entertained by the commission upon the Rice petition.)

IV.

There Is No Repugnancy Between the Commodity Exchange Act and the Law of Illinois.

The federal statute seeks only to control excessive speculation upon and manipulation in commodity exchanges. (Section 3.) This control is exercised by prohibiting futures trading except where executed through registered futures commission merchants and brokers trading on boards of trade designated as contract markets by the Secretary of Agriculture. In addition, specific manipulative devices or practices which have led to excess speculation are prohibited. (Section 4-4d.) A board of trade may be designated as a contract market when there is a sufficient volume of trading in the actual commodity as well as in futures, when records are maintained, false reports and manipulation of prices are prevented, and membership is assured to co-operative associations. (Section 5.) The designated contract market is required under the statute to:

a) "Furnish" the secretary with copies of rules and regulations and changes therein. (Section 5a(1).)

b) Allow the inspection of its books by the secretary. (Section 5a(2).)

c) Require warehouses out of which deliveries can be made on futures contracts to make reports, keep records and allow "visitation" by the secretary. (Section 5a(3).)

d) Provide the delivery period, delivery notice and the grades of commodities that may be delivered on futures contracts. (Section 5a(4), (5) and (6).)

e) Require that federally licensed warehousemen be declared regular for deliveries on futures contracts "without discrimination", irrespective of the possession of state licenses, provided reasonable requirements as to accessibility and suitability are met. (Section 5a(7).)

The statute is not comprehensive in scope. It does not provide for affirmative regulation, but controls in a negative manner by prohibiting futures trading unless certain specific minimal requirements are met. The limited and circumscribed character of the Commodity Exchange Act and the underlying congressional intent were authoritatively discussed in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933). The claim was there made that a Missouri statute which declared illegal certain grain futures transactions had been superseded by the Grain Futures Act (Commodity Exchange Act before its amendment in 1936), on the ground of exclusive occupancy of the field by federal authority. In upholding state regulation, this court said at pages 198-200:

> "The Federal Act • • • does not purport to validate any dealings. Nor is there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all State legislation in any way dealing with that subject is superseded."

There was no general regulation or attempted regulation of futures trading, only specific subjects were covered. *State* v. *Christopher,* 318 Mo. 225, 2 S. W. (2d) 621, 628 (1928).

In fact, Congress has expressly negatived any broad supersedure of state regulation in the general field by manifesting its intent in Section 12 to preserve state control. It is there provided:

> "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *."

Congress thus recognized the existence of state authority in this field partially covered by federal enactment, and authorized the Secretary of Agriculture to draw assistance from and lend assistance to any state authority in furtherance of the congressional purpose. As this court recently said in *United Brokerage Co.* v. *Jensen,* 322 U. S. 202, 209 (1944):

> "Where the government has provided for collaboration the courts should not find conflict."

The Board of Trade has urged and the Court of Appeals has held as a basis upon which to invalidate state legislation that:

> "* * * Congress intended and expressly provided for exclusive federal control and authority over * * * the Board of Trade." (Rec. 259.)

This holding, we submit, is erroneous and directly in conflict with this court's decision in the *Dickson* case.

The invoked state authority validly controls a specific subject matter of regulation not occupied by or repugnant to federal statutes.

The state commission has been granted authority to pass upon in the public interest rules and regulations of the Board of Trade which relate to public or private warehousing of grain, and custodian receipts covering private warehousing. The Board of Trade has from time to time passed rules dealing with warehousing rates, services and financial transactions. (Rules 1620-36, *Board of Trade* case, Tr. 155-9). These are the rules over which state regulation is sought.

The federal act refers to warehouses in only two instances, and then only warehouses that have been approved or declared "regular" as facilities from which delivery may be made on futures contracts. A futures contract may be satisfied either by an offsetting trade in the futures market or by delivery of a warehouse receipt issued by a warehouse so approved.

The references to such warehouses in the federal act are:

Section 5a(3), which requires that boards of trade require regular warehouses to make reports, keep records and permit visitation by the secretary. This requirement obviously is intended to give the secretary general information only.

Section 5a(7), requires boards of trade to declare federal licensed warehouses regular for futures deliveries, irrespective of the possession of state licenses, "without discrimination". The purpose of this section was to prevent discriminations by boards of trade against warehouses possessing only federal licenses. It gave federal warehouses the same status as far as futures deliveries are concerned as state licensed warehouses, but both fed-

eral and state houses continued to be subject to all rules and regulations of the Board of Trade and to all applicable laws as long as such rules, regulations and laws are applied "without discrimination".

These two references to warehouses do not deal with the warehouse operating features of Board of Trade rules, over which state approval is required. In addition, the following types of warehouses or warehousing functions are not remotely referred to by the Commodity Exchange Act, since the warehouses or warehousing functions are not a part of the futures delivery mechanism—the only phase of warehousing upon which the federal act touches. The Board of Trade nevertheless has adopted rules relating to such warehousing functions, and certainly there can be no question that such rules must be submitted to the Illinois commission for approval:

1. Warehousing of public grain in houses that *have not been designated as regular* for delivery of grain in satisfaction of futures contracts.

2. Custody of grain in *private* warehouses, and control of custodian receipts.

3. Warehousing of actual grain which is not used in connection with futures trade or deliveries on futures contracts.

4. The rates and practices under which actual grain is stored and handled by warehousemen.

The Commodity Exchange Act does not require any rule or regulation of the Board of Trade to be submitted to the Secretary of Agriculture for his approval, and that is the specific state regulatory function here involved. The act contains only one prohibition with respect to the contents of a board of trade rule, and that is that no rule shall forbid the return of patronage dividends to cooperative members, nor shall the Board of Trade deny member-

ship to cooperative associations. (Sections 5e, 6a(2).) The subject of cooperatives has no relationship to our instant problem. No possible conflict could occur between this federal prohibition and the state requirement that rules relating to warehousing be approved.

Section 5a(1) of the federal act does require the Board of Trade to "furnish" the secretary with copies of all rules and regulations and changes therein. These rules are required to be furnished solely for informational purposes so that the secretary may keep advised of the type of regulations existing or being proposed. But this prohibition is vastly different from the requirement under the state act that certain rules and regulations must receive the commission's approval before they may become effective. The state commission is thus authorized to exercise regulatory power in the public interest.

This federal provision could in no way conflict with the state requirement. Assume that the Board of Trade adopted a rule and submitted it to the state commission, and that it was disapproved. There would be nothing to furnish the secretary. If the rule was approved, it would be furnished the secretary and complete compliance with both statutes would result. Nor could the state require the Board of Trade to adopt a rule which might infringe upon the Board of Trade's limited federal obligations, since the state commission cannot initiate a rule, but only passes upon rules first adopted by the Board of Trade and then submitted to the commission for approval.

The federal agency has not been granted power to approve or disapprove warehousing rules adopted by the Board of Trade. This regulatory function may be exercised solely by the state. To invalidate state authority would be to eliminate completely this form of regulation.

The court could not transfer or delegate the function to the secretary. Congress has not done so.

Counsel for the Board of Trade has not urged that the secretary has power to approve its warehousing rules. The Court of Appeals, however, has erroneously held (*Board of Trade* case, Tr. 261; *Great Lakes* case, Tr. 125):

> "We therefore are of the view that Congress has invaded the precise field occupied by the Illinois commission by reason of § 194b of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The Court of Appeals misconceived and misconstrued the provisions, scope and character of the Commodity Exchange Act, and the principles of supersedure that have been announced by this court in favor of the validity of state authority in the absence of irreconcilable conflict.

DIGEST OF IMPORTANT CASES SUSTAINING STATE REGULATIONS ALTHOUGH FEDERAL CONTROL EXISTED IN THE SAME FIELD.

Food and Agricultural Products.

Reid v. *Colorado*, 187 U. S. 137 (1902)

A federal act declaring it an offense for one knowingly to transport diseased livestock from one state to another did not invalidate a state requirement that livestock imported into the state be certified as free from contagious disease, regardless of shippers' knowledge.

Savage v. *Jones*, 225 U. S. 501 (1912)

The Federal Food and Drugs Acts, prohibiting the misbranding of food products, does not supersede a state law requiring that the entire contents of the product be disclosed.

Sligh v. *Kirkwood*, 237 U. S. 52 (1915)

A state statute making it unlawful to ship in interstate commerce citrus fruits which are immature or "otherwise unfit for consumption" does not contravene the Federal Food and Drugs Act dealing with fruit which is "filthy, decomposed or putrid."

Merchants Exchange of St. Louis v. *Missouri*, 248 U. S. 365 (1919)

Comprehensive Federal Grain Standards Act relating to standards of quality and condition of grain does not supersede state law prohibiting weighing of grain shipped into and outside of the state by other than state appointed weighers.

Corn Products Refining Co. v. *Eddy et al.*, 249 U. S. 427 (1919)

A state statute adopting almost the identical language of the Food and Drugs Act, but in addition permitting the state administrative body to require manufacturers of proprietary syrups to state on the label the percentage of each ingredient, is valid, notwithstanding the federal act prohibited misbranding and required the labeling of such substances as morphine, cocaine and opium.

Carey v. *South Dakota*, 250 U. S. 118 (1919)

Federal Migratory Bird Act, placing migratory ducks within the custody and protection of the United States Government and forbidding their being destroyed or taken out of season, does not conflict with a state law prohibiting the shipment of wild ducks either within or to points outside the state.

Mintz v. *Baldwin*, 289 U. S. 346 (1933)

A certificate that cattle shipped in interstate commerce are free from Bangs disease may lawfully be required by the state of importation from state of origin, notwithstanding federal law which provided that whenever an inspector of the Bureau of Animal Industry, issues a certificate of inspection, cattle may be shipped in interstate commerce without further examination.

Dickson v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933)

State law declaring certain sales of grain for future delivery to be illegal is not superseded by the Grain Futures Act, which regulates and thus acquiesces in grain futures trading.

Hartford Indemnity Co. v. *Illinois*, 208 U. S. 155 (1936)

An Illinois statute paralleled a federal statute in licensing produce merchants. Additional state requirement of a bond was not superseded.

Pacific States Co. v. *White*, 296 U. S. 176 (1935)

Federal Standard Baskets and Containers Act, fixing the cubic contents of containers for fruits and vegetables, does not conflict with or supersede a state regulation determining the dimensions and form of a container for raspberries.

Townsend v. *Yeomans*, 301 U. S. 441 (1937)

A state statute, fixing maximum charges for handling and selling leaf tobacco by warehousemen, is not repugnant to the Tobacco Inspection Act containing comprehensive provisions over marketing and inspection of tobacco.

Parker v. *Brown*, 317 U. S. 341 (1943)

The Federal Agricultural Marketing Agreement Act permitting the Secretary of Agriculture to adopt a marketing program for raisins does not, in the absence of an order of the Secretary, forbid a similar program under state statute.

Railroads and Motor Carriers.

Atlantic Coast Line v. *Georgia*, 234 U. S. 280 (1914)

A state may require locomotive headlights of specific intensity as a safety measure, notwithstanding Congress had enacted legislation pertaining to many types of locomotive safety devices.

Missouri Pacific R. Co. v. *Norwood*, 283 U. S. 249 (1931)

The authority of the Interstate Commerce Commission over service and supply of trains does not conflict with the state's power to prescribe the number of members of a railroad train and switching crew.

Atchison Ry. v. *Railroad Comm.*, 283 U. S. 380 (1931)

Provisions in the Interstate Commerce Act for commission approval of construction of railroad terminal do not supersede state power to order and compel construction of such a terminal.

South Carolina State Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177 (1938)

The Federal Motor Carrier Act does not forbid a state from regulating the weight and width of trucks using its roads in interstate commerce.

Welch Co. v. *New Hampshire*, 306 U. S. 79 (1939)

A state statute prohibiting a truck driver from being on duty in excess of twelve hours is not superseded by the Federal Motor Carriers Act of 1935, empowering the Interstate Commerce Commission to regulate the maximum number of work hours for such drivers.

Maurer v. *Hamilton*, 309 U. S. 598 (1940)

A state statute prohibiting the operation on a highway of a vehicle carrying another vehicle above the cab of the carrier does not conflict with the Federal Motor Carrier Act empowering the Interstate Commerce Commission to establish regulations as to safety of operations and equipment, and to investigate weights and sizes of vehicles, notwithstanding a finding by the commission that the type of operation prohibited by the state was not unsafe.

Terminal Assn. v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1 (1943)

An Illinois Commerce Commission order requiring caboose cars for switchmen in intrastate movement of freight trains, but having the practical result of compelling such cars also in interstate commerce, is permissible and not superseded by Federal Railway Labor Act, Interstate Commerce Act, Safety Appliance Act or Boiler Inspection Act. (This case was considered, *ante*.)

Southern Pacific Co. v. *Arizona*, 325 U. S. 761 (1945)

A state statute limiting the length of interstate trains does not conflict with power in the Illinois Commerce Commission to regulate the same subject matter in an emergency.

Miscellaneous.

Minnesota ex rel Whipple v. *Martinson*, 256 U. S. 41 (1921)

A state law forbidding a physician to furnish drugs to habitual users out of stock on hand, and requiring the issuance of a prescription, was not in conflict with the Harrison Anti-Narcotics Act, which permitted physicians personally to dispense drugs to such persons at his pleasure, provided proper records were kept.

Kelly v. *Washington*, 302 U. S. 1 (1937)

Elaborate federal regulations for marine safety control, including the prescription of numerous safety devices and inspection of hulls of motor-driven vessels carrying passengers or freight for hire, or flammable or other like dangerous cargo, did not supersede state inspection of hulls of motor-driven tugs not in the categories specifically covered.

Allen-Bradley Local v. *Wisconsin Emp. R. Bd.*, 315 U. S. 740 (1942)

State labor law, declaring certain *employee* practices unfair labor practices, is not in conflict with the NLRB prescribing unfair *employer* labor practices.

Anderson National Bank v. *Luckett*, 321 U. S. 233 (1944)

National banks may be required under a state statute to turn over inactive accounts to the state, without infringing upon the provisions of the national banking laws pertaining to acceptance of deposits and doing a banking business.

Union Brokerage Co. v. *Jensen et al.*, 322 U. S. 202 (1944)

State requirement of license of foreign custom house brokers not in conflict with licensing provisions of the federal act dealing with custom house brokers.

Railway Mail Assn. v. *Corsi*, 326 U. S. 88 (1945)

An association of United States postal employees, subject to federal statutes regulating terms and conditions of employment and prohibiting discrimination because of membership in a union, is nevertheless subject to a state law prohibiting discrimination in union membership on account of race, creed or color.

CLOVERLEAF BUTTER CO. V. PATTERSON, 315 U. S. 148, distinguished.

The Circuit Court of Appeals confessedly grounded its opinion principally upon this court's decision in *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, for it says (*Great Lakes* case, Tr. 112; *Board of Trade* case, Tr. 248):

> "The case on its facts and questions decided most similar to the instant one is that of *Cloverleaf Butter Co.* v. *Patternson, supra.* • • •"

We recognize that when a court of second highest authority in the land bases its decision chiefly upon a decision of this court that it deems controlling we must read that case with particularly respectful attention. We have done so.

The following considerations distinguish the *Cloverleaf* case from the instant cases in the following salient respects:

First: Although it is true that public health was involved, the *activity* subject to state and federal superintendence was the narrow one of the manufacture and production of a single food product, to-wit: renovated butter. While many steps enter into the preparation of the finished product, they comprised an integrated sequence of activities calculated to a single end, namely, the offering to the public of a single and highly specific food product.

We can incisively put the matter as follows: Here is a package of renovated butter. The federal government says that it may be sold. The state of Alabama says that it may not be sold. Both regulations cannot simultaneously be given effect.

But grain warehousing is a business of manifold aspects. The enterprise is a public utility. Its functions are myriad. Its operations are a matter of national destiny.

In the instant case the federal act is primarily designed to assure, by federal approval, the reliability of highly negotiable grain warehouse receipts. It is true that to that end it endows the Secretary of Agriculture with some measure of control over federally licensed warehouses.

But the act does not empower him to fix rates, approve financial transactions, regulate transactions with other utilities, or promulgate regulations prospective and therefore legislative in tenor, with respect to the vitally important warehouse business generally. The power of the states in such cases has been historic. It should not be nullified unless the conflict is inevitable, as was the conflict in the *Cloverleaf* case.

In the *Cloverleaf* case there was precise coincidence of subject matter—namely, the renovated butter viewed as a product fit or unfit, as the case might be, for human consumption. In the instant case there is no single, simple product which cannot be simultaneously fit and unfit but a vast industry which has always been subject, in related but very diverse phases, to the sort of authority that Illinois asserts and that is not subject to any comparable authority upon the part of the Secretary of Agriculture.

Second: With respect to the act involved in the *Cloverleaf* case, there was no history of prior explicit provision

that state authority should be unimpaired by the act. There is such a history in connection with the instant acts.

Although the Circuit Court of Appeals places reliance upon the provision inserted by the 1931 amendment of Section 29 of the Federal Warehouse Act, which provided that

> "• • • the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. • • •"

this language, particularly when read in the historical context of the act, is at least as favorable to petitioners as it is to respondent.

The Federal Warehouse Act expressly provides that the Secretary of Agriculture "is authorized to co-operate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers • • •."

Now how can the Secretary of Agriculture "co-operate with State officials charged with the enforcement of State laws relating to warehousemen" if such State laws are superseded? No such consideration was present in the *Cloverleaf* case.

This language falls far short of peremptory interdiction of all state authority over grain warehouses. The Circuit Court of Appeals has held that the Illinois Commerce Commission cannot regulate or even investigate any phase of the vast grain warehouse business. We submit that this ruling should elicit *certiorari* and result in reversal.

Conclusion.

Wherefore, it is respectfully submitted that the public interest will be promoted by the granting of this petition and the decision by this court of the question involved.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Petitioners.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

APPENDIX I.

ARTICLE XIII.

WAREHOUSES.

§ 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

§ 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath, before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of making such statement outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

§ 3. The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

§ 4. All railroad companies and other common carriers on railroads shall weight or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

§ 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

§ 6. It shall be the duty of the general assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies.

§ 7. The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

APPENDIX II.

Illinois Grain Warehouse Act

(Illinois Revised Statutes, 1945, Ch. 114, pars. 293-326a, pp. 2714-2718.)

STORAGE OF GRAIN.

AN ACT to provide for the storage of cereal grains, soybeans and cowpeas in State-licensed warehouses and under State supervision, and the issuance of storage certificates therefor, and providing penalties for offenses thereunder. [Approved June 30, 1927. L. 1927, p. 704, title as amended by act approved July 2, 1935. L. 1935, p. 1115.] *Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

293. Definitions.] § 1. That wherever the word "board" shall appear in this act it shall refer to any local supervisory board of individual producers appointed by the Department of Agriculture under the provisions of this act.

The word "sealer" shall refer to any person whose duty it shall be under the provisions of this act to seal any granary, crib, bin, or other receptable for grain.

The word "certificate" shall refer to any certificate or receipt evidencing the storage of grain under the provisions of this act and any rules or regulations promulgated thereunder.

The word "owner" shall refer to and include any person or persons, (whether individuals, copartnerships or corporations) who shall either personally or as trustee have title to or the right of possession of any grain stored under the provisions of this act.

The words "grain in storage" shall refer to cereal grains, soybeans and cowpeas stored under the provisions of this act. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

294. Local supervisory boards.] § 2. Local supervisory boards consisting of not less than three (3) nor more than seven (7) members shall be appointed by the Department of Agriculture in any county or counties upon the applica-

tion of one or more citizens as hereinafter provided for the purpose of supervising grain in storage and the issuing of certificates against such grain, and generally and under the direction of the Department of Agriculture for carrying out the purposes and enforcing the provisions of this Act. A suitable name and a number shall be given to such board by the Department of Agriculture. The members of such board shall at the time of their appointment be producers of grain in the county or counties for which they are appointed and residents thereof. They shall continue in office until their successors are appointed by the Department of Agriculture. In the event of vacancies arising by reason of the resignation or upon removal from the county or counties or death of any member or members such vacancies shall be filled in manner and form as in the case of original appointments. Each board shall appoint one of its own members as its secretary. The secretary may also be the treasurer and each board shall also appoint a president and vice president from its own membership, and their duties shall be those of similar officers in their organization. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

295. Oath—Treasurer's bond.] § 3. Members of such boards shall qualify by taking oath similar to that required of public officials. The treasurer shall furnish bond conditioned for the faithful performance of his duties as treasurer, for the faithful accounting for moneys coming into his hands and for the delivery of any unexpended portions thereof to his successor in office or to such other person or persons or to such societies as may be provided by law. Such bond shall be in such amount not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00) as may be determined by the Department of Agriculture. Such bond shall be deposited with and the sureties thereon shall be approved by such Department. In case such bond is not a personal bond the premium therefor shall be paid out of the funds of the board. [As amended by act approved June 9, 1943. L. 1943, vol. 1, p. 1052.]

296. Issuance of license.] § 4. Upon the appointment and qualification of the members of such board the Department of Agriculture shall immediately issue a license to it, and prescribe the duties of its officers and the records they shall keep. Each license shall be numbered, and specify

the territory which shall be under the jurisdiction of the board and within which certificates may be issued, such certificates shall bear the names and the license number of the board. It shall also have printed thereon such other directions, rules and regulations as the Department of Agriculture shall make or promulgate and deem necessary to set forth upon such license.

297. Appointment of board.] § 5. Any person may make application to the Department of Agriculture for the appointment of a board in and for the territory in which he resides; or the Department of Agriculture may make such appointments upon its own initiative. When any such application is made the Department of Agriculture shall as soon as practicable investigate the situation and determine upon the advisability or otherwise of making the appointments requested. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

298. Local sealer.] § 6. The board shall submit to the Department of Agriculture the name of some person or persons who shall, subject to the approval of the Department of Agriculure, act as the local sealer or sealers, and every such sealer shall have the same authority with respect to the provisions of this act and the rules and regulations promulgated thereunder, and the enforcement thereof, as any officer of the peace.

299. Application for storage—Appeal from decisions of board.] § 7. The privileges of this act shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board.

Any owner aggrieved by any ruling or decision of the board may appeal to the Department of Agriculture whose decision, subject to the judicial review thereof hereinafter provided, shall be final. As amended by act approved June 30, 1945. L. 1945, p. —, S. B. No. 139, effective Jan. 1, 1946.

Text of section until Jan. 1, 1946.

299. Application for storage—appeal from decisions of board. § 7. The privileges of this act shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board.

Any owner aggrieved by any ruling or decision of the board may appeal to the Department of Agriculture whose decision shall be final.

300. Power and duty of sealer.] § 8. It shall be the duty of the sealer under the direction of the Department of Agriculture, to:

a. Supervise the storage of grain.

b. Ascertain the amount stored by each owner who shall desire to avail himself of the provision of this Act.

c. Determine, so far as possible, upon the basis prescribed in the rules and regulations issued hereunder, the exact grade and quality thereof.

d. Ascertain, prior to the issuance of any certificate, that the bin, crib, granary or other receptacle in which the grain is stored is satisfactory for the storage of such grain, and that such receptacle conforms to the regulations applicable thereto promulgated by the Department of Agriculture.

He shall, before delivering a certificate to the owner, ascertain that there are no other outstanding certificates upon the grain and shall securely seal the granary, crib, bin or other receptacle in which the grain so certified is stored. Thereafter the sealer may make such inspections of the granaries, cribs, bins or other receptacles so sealed, at such times and in such manner as the Department of Agriculture may determine rendering to the Department, and to the owner when requested, such reports as to the amount and condition of the grain in storage and the condition of the receptacle in which it is stored, as may be required. The sealer shall have authority at all times to enter upon any premises for the purpose of inspecting grain in storage or the granary, crib, bin or other receptacle in which it shall have been stored, and the acceptance of a certificate by the owner shall be deemed consent to entry and inspection by the sealer or any person duly authorized thereunto by the Department of Agriculture.

Seals or locks, or other fastenings employed shall be in accordance with specifications furnished by the Department of Agriculture. A warning card shall be posted in a conspicuous place near the seal on each receptacle sealed. Such card shall contain substantially the following wording:

"WARNING

Sealed by authority of the Department of Agriculture of the State of Illinois.

Any person tampering with this seal or removing any grain therefrom shall be subject to fine and imprisonment as provided by law.

Signed....., Director of Agriculture, State of Illinois." [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

301. Bond and oath of sealer.] § 9. The sealer shall furnish bond for the faithful performance of his duties in such amount not less than one thousand dollars ($1,000) as shall be determined by the Department of Agriculture. Such bonds and the sureties thereon, shall in every case be subject to the Department's approval and be deposited with it, and in case it is not a personal bond the premium thereon shall be payable out of any funds in the hands of the board. He shall also qualify by taking an oath similar to that required of public officials. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

302. Form of certificates.] § 10. Certificates shall be upon forms to be prepared by the Department of Agriculture, and every such certificate must embody within its written or printed terms:

(a) The name and license number of the board under which such certificate is issued.

(b) The consecutive number of the certificate.

(c) The date of issue of the certificate.

(d) A particular description of the granary, bin, crib, or other receptacle in which the grain is stored, and of the premises upon which it is located.

(e) A description of the grain.

(f) The name of the owner or owners, whether ownership is sole, joint, or in trust, and the conditions of such ownership, and (in the case of tenants) the date of termination of the lease.

(g) A statement of any loans or other indebtedness made to or owing by the owner which in any manner constitutes a lien, whether statutory or contractual, including both mortgage and landlord's liens, upon the grain, which statement shall be signed by the owner or his agent.

(h) A form of waiver of liens which may be signed by the lienholder.

(i) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order, and at what place it will be delivered.

(j) A facsimile signature of the Director of Agriculture and the countersignature of the sealer.

(k) If the owner is married, a waiver by the spouse of any claim of exemption and a consent to the instrument.

(l) A statement that no other certificate is outstanding covering the grain represented thereby. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

303. Owner not to be relieved from duty of reasonable care.] § 11. No term or condition shall be inserted in any certificate, whether negotiable or otherwise which shall in any manner purport to relieve the owner from exercising that degree of care in the safe keeping of the grain in storage which a reasonably prudent man would exercise with regard to similar property of his own.

304. Non-negotiable certificate.] § 12. A certificate in which it is stated that the grain stored shall be released or delivered to the owner, or to any other specified person, is a non-negotiable certificate.

305. Negotiable certificate.] § 13. A certificate in which it is stated that the grain stored will be delivered to the bearer, or to the order of any person named in such certificate, is a negotiable certificate.

No provision shall be inserted in a negotiable certificate that is non-negotiable. Such provisions, if inserted, shall be void. Provided, however that in case the owner is a tenant, the certificate shall cease to be negotiable from and after the date of the termination of the lease as it appears thereon.

306. Issuance of certificate.] § 14. The sealer shall issue to the owner one or more certificates as herein provided, but the aggregate amount of the grain represented by such certificate or certificates shall in no event exceed the amount of grain stored and sealed by the sealer, and each such certificate shall cover a separate granary, crib, bin or receptacle. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

307. Duplicate of certificates to be filed.] § 15. All certificates issued hereunder shall be issued in triplicate or in case the Department of Agriculture shall so direct, in

quadruplicate. All such copies except the original shall be marked "Duplicate—No Value". The sealer shall file with the Secretary of the board one duplicate of all certificates delivered by him, and the secretary shall keep an accurate record thereof in a book provided by the Department of Agriculture for the purpose. In case the Department shall so direct, the sealer shall also file one duplicate of all certificates delivered by him with the Department for the Department's records. The original and one duplicate copy shall be delivered to the owner. The owner may file this duplicate copy in the office of the Recorder of Deeds or he may retain the same and when he negotiates the original certificate, may at the same time deliver to the assignee the duplicate copy. In case the owner has filed the duplicate with the Recorder, he shall deliver the Recorder's receipt for the duplicate to the assignee at the time he negotiates the original certificate. In case the duplicate copy is delivered to the assignee, the assignee may file such duplicate copy in the office of the Recorder of Deeds for the county in which the grain is located and such duplicate shall remain in the custody of the Recorder except as hereinafter provided.

When a duplicate is presented to the Recorder carrying the endorsement "This instrument to be filed but not recorded," the Recorder shall file the same in his office and shall index the same in the chattel mortgage index or other suitable index and shall show the date of the certificate, the number thereof, to whom it was issued and the kind, quantity and location of the grain covered thereby. He shall collect a fee of twenty-five cents (25¢) for filing and indexing each such duplicate certificate. The filing and indexing of such certificate shall impart the same notice as the filing and indexing of a chattel mortgage.

When the owner or holder of a certificate makes written assignment thereof, the Recorder shall on request of the assignee enter a copy of such assignment upon the duplicate certificate filed in his office and shall enter upon the index book the date of the assignment and the names of the assignor and assignee. The Recorder shall collect a fee of twenty-five cents (25¢) for each assignment entered. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

308. § 16. Repealed L. 1931—32, First Sp. Sess., p. 64.

308a. Cancellation of certificate.] § 16a. The owner may secure the cancellation of a certificate by delivering the original thereof to the board by which it was issued with the request that it be cancelled. The board shall stamp the word "Cancelled" together with the date of such cancellation upon such original certificate and also upon the duplicate thereof in its files. The board shall retain the original certificate so cancelled. Upon notice in writing from the board issuing the original certificate to the effect that it has been cancelled, the Recorder of Deeds shall release the duplicate thereof filed of record in his office without charge. In case a copy of such certificate has been filed with the Department of Agriculture, the board shall also notify such Department of the cancellation of such certificate. [Added by act approved July 2, 1935. L. 1935, p. 1115.]

309. Board may act as trustee of certificates.] § 17. Whenever it shall appear that the interests of holders of certificates and other parties interested may be further conserved thereby the Department of Agriculture may authorize the board to act as trustee for such certificates as may be assigned to it in that capacity and the board may then exercise all the rights of an owner, subject to the duties and responsibilities imposed and devolving upon trustees under similar conditions. All certificates issued by the board as trustee shall have that fact plainly set forth thereon, any other provision of this act to the contrary, notwithstanding, but such statement shall in no manner affect the negotiability or non-negotiability of such certificate.

310. Non-negotiable certificate labelled as such.] § 18. A non-negotiable certificate shall have plainly printed or written upon is face, "Non-negotiable" or "Not Negotiable."

311. Delivery of grain.] § 19. The owner shall, in the absence of some lawful excuse provided by this act, deliver the grain stored upon demand made by the holder of a certificate for the grain, or for such part thereof as is represented by the certificate if such demand is accompanied by:

(a) A showing that all such liens as may appear upon the certificate and which shall subsist upon the date of the demand have been satisfied

(b) An offer to surrender the certificate if negotiable, with such endorsements as would be necessary for the negotiation of certificate, and,

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the owner.

In case the owner refuses or fails to deliver the goods in compliance with a demand by the holder of a certificate so accompanied, the burden shall be upon the owner to establish the existence of a lawful excuse for such refusal.

312. Pooling of grain in storage by owners.] § 20. Owners may, for the purpose of pooling their grain and affording a higher degree of security, organize themselves into groups of two or more owners of grain in storage, all of whom shall be jointly and severally liable to holders of certificates in due course to the extent of seventy-five per cent of the market price of the grain represented by certificates issued against it, and at the time of their sale, pledge, assignment or other lawful disposition, and all the grain in storage and belonging to said pool shall be liable for the payment of moneys advanced against, or paid for such certificates.

313. Group certificates.] § 21. Certificates issued to or on behalf of the members of such groups shall have printed thereon the words "Group Certificates". They shall embody the same terms as are required in the case of other certificates issued under the provisions of this act insofar as they are applicable, and in addition thereto, shall have stated thereon the total amount of grain belonging to the pool and the names of the members constituting the group.

All group certificates shall be negotiable, and any provision thereon contrary thereto or inconsistent therewith or in any manner purporting to relieve the members of the group of their liability or any part thereof, as provided in the immediately preceding section, shall be void. [As added by act approved July 2, 1935. L. 1935, p. 1115.]

314. Application to organize group.] § 22. When any owners desire to organize themselves into a group for the purposes described in the two immediately preceding sections, they shall notify the secretary of the board upon forms provided for that purpose. The secretary shall transmit a duplicate of such application to the Department

of Agriculture. Unless, for good cause shown, the Department of Agriculture shall expressly disapprove of the organization of such group or groups and the functioning thereof, certificates may be issued to or on behalf of said group or groups as provided herein. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

315. Sealing, etc., applies to group certificates.] § 23. "Group Certificates" shall be issued by the local sealers as in case of individual certificates and all provisions of this act with respect to inspection, sealing and supervision of grain storage shall apply to the members of groups and the certificates issued for them. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

316. Department of Agriculture to supervise administration of act.] § 24. Te Department of Agriculture shall have general supervision of the administration of the provisions of this act and shall make and promulgate such rules and regulations, not inconsistent herewith, as shall be necessary or desirable effectually to carry out the purposes here of. It shall make such reasonable regulations with respect to the construction and maintenance of granaries, cribs, bins or other receptacles as may be necessary to protect the grain to be stored therein under the provisions of this act. It shall prepare and have printed under the same conditions as other state printing the necessary blanks, forms and other printed matter and shall make such charges to persons desiring such printed matter as shall meet the cost of production thereof. Such department may preseribe the forms of account to be kept by the several local supervisory boards and may, from time to time, require an audit of such account. The cost of any such audit shall be paid from the funds of the board whose accounts are audited. One copy of the report of such audit shall be filed with the Secretary of the board involved and one copy shall be filed with the Department. Each of such copies shall be open to public inspection during office hours. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

317. Complaints to be made to department—Hearing.] § 25. If any person shall feel aggrieved by any action of the board or of the sealer or any other official, he may submit his complaint in writing to the Department of Agriculture and the Director of Agriculture shall, as soon there-

after as possible, set the matter down for hearing before himself or one of the officers or employees of the Department at such place as shall be desirable and proper, having regard to the character of the controversy and the locality of the grain and residence of the parties involved. Likewise, the board may present to the Department of Agriculture any proper complaint against any owner and the procedure shall be as nearly as practicable the same as that in the case of charges filed by owners.

318. Orders of department—may suspend board's license.] § 26. The Department of Agriculture shall upon final hearing, make and enter such orders as it shall deem proper for the correction of improper practices, and may suspend the licenses of the board offending until such orders are obeyed. But such suspension shall in no manner relieve the board or the owners of any liability previously incurred under the provisions of this act. The costs and expense of such hearing shall be defrayed by the parties thereto, and shall be apportioned by the Department of Agriculture in such manner as it shall deem just and equitable.

319. Expenses of supervision—Fee paid by owner.] § 27. For the purpose of defraying the expenses of supervision, the owner shall pay to the board at the time of sealing, an amount which shall not exceed one cent per bushel of grain inspected and sealed by the sealer. Out of the fund thus created the compensation of the sealer, as fixed by the board, subject to the approval of the Department of Agriculture, and all other expenses, shall be paid. No compensation shall be paid to members of the board except by the express authorization and approval of the Department of Agriculture, and then only in case such payments may be made without overdrawing upon or unduly depleting the funds in the hands of the board. In the exercise of his powers and functions as an officer of the peace in connection with the provisions of this act, the sealer shall be entitled to the same fees as are provided by law for the performance of similar duties.

The board, subject to the approval of the Department of Agriculture, may direct the treasurer to pay any or all surplus moneys in his hands to any one or more agricultural societies designated by the board. As amended by act approved June 9, 1943. L. 1943, vol. 1, p. 1052.

320. Fee payable to Department of Agriculture.] § 28. The Department of Agriculture shall receive the following fees for services rendered under the provisions of this act:

For issuing licenses in each case, three dollars ($3.00).

For approving applications for group organizations, one dollar ($1.00).

All moneys received by the Department of Agriculture from fees and other sources in connection with the administration of the provisions of this act shall be paid into the State treasury.

321. Interfering with grain stored.] § 29. Any person unlawfully removing, breaking or in any manner interfering or tampering with any seal, lock or other fastening placed upon any granary, crib, bin or other receptable for grain under the provisions of this act, except when such removal shall be rendered imperative to prevent the damage, loss or destruction of grain stored therein, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

322. Fraudulent issuance of certificate.] § 30. An owner, the agent or servant of an owner, or any member of any board, or any sealer, who fraudulently issues or aids in fraudulently issuing a certificate for grain, knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars, or both.

323. Issuance of duplicate certificate.] § 31. An owner, or any officer, agent or servant of any owner, who issues or aids in issuing a duplicate or additional negotiable certificate for grain, knowing that a former negotiable certificate for the same grain, or any part of it, is outstanding and uncanceled, wihout plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed certificate after proceedings as provided for in section 14[1] of "An Act in regard to warehouse receipts" approved May 29, 1907, shall upon conviction be punished for each

[1]Chapter 110, §§ 264-279.

offense by imprisonment in the penitentiary not exceeding two years, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

324. Delivery of grain with certificate outstanding.] § 32. An owner, or any officer, agent or servant of an owner, who delivers grain out of the possession of such owner, knowing that a negotiable certificate, the negotiating of which would transfer the right to the possession of such grain, is outstanding and uncancelled, without obtaining the possession of such certificate at or before the time of such delivery, shall, except when ordered by the court, as hereinbefore provided, be found guilty of a misdemeanor, and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine.

325. Transfer or mortgage of grain after issuing certificate.] § 33. Any owner who shall, after the issuance of a certificate for grain in storage, take, sell, mortgage, pledge, hypothecate or otherwise incumber, or attempt to take, sell, mortgage, pledge or otherwise incumber the said grain, or who shall take or remove it from the receptacle where standing, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

326. Application of Warehouse Receipts Act.] § 34. All the provisions of Section 9 to 48,[1] inclusive, of "An Act in regard to warehouse receipts," approved May 29, 1907, relative to the negotiation, transfer, sale or endorsement of warehouse receipts shall so far as possible, apply to the negotiation, transfer, sale or endorsement of the certificates provided for herein.

Where the word "owner" is used in this act it shall be construed to be used in the same connection as the word "warehouseman" as used in the uniform warehouse receipts act, and where the word "certificate" is used in this act, it shall be construed to be used in the same connection as the word "receipt" is used in "An Act in regard to

warehouse receipts," approved May 29, 1907. [As amended by act approved July 2, 1935. L. 1935, p. 1115.]

326a. Judicial review of administrative decisions.] § 35. The provisions of the "Administrative Review Act", enacted by the 64th General Assembly,[1] and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department of Agriculture hereunder. The term "administrative decision is defined as in Section 1 of said "Administrative Review Act".[2]

Added by act approved June 30, 1945. L. 1945, p. —, S. B. No. 139, effective Jan. 1, 1946.

[2]Chapter 110, § 264.

APPENDIX III.

Illinois Warehouse Receipts Act.

AN ACT in regard to warehouse receipts, approved May 29, 1907, in force July 1, 1907.

ARTICLE I.

THE ISSUE OF WAREHOUSE RECEIPTS.

233. ISSUED BY WAREHOUSEMEN.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Warehouse receipts may be issued by any warehouseman.

234. REQUIREMENTS OF.] § 2. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored.

(b) The date of issue of the receipt.

(c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(e) The rate of storage charges.

(f) A description of the goods or of the packages containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been

made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of the terms herein required.

235. TERMS AND CONDITIONS.] § 3. A warehouseman may insert in a receipt, issued by him, any other terms and conditions: *Provided*, that such terms and conditions shall not

(a) Be contrary to the provisions of this Act.

(b) In any wise impair his obligation to exercise that degree of care in the safe keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

236. NON-NEGOTIABLE—WHEN.] § 4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

237. NEGOTIABLE—WHEN.] § 5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

238. DUPLICATE RECEIPTS.] § 6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be the original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

239. NON-NEGOTIABLE RECEIPT TO BE SO MARKED.] § 7. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "Not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

ARTICLE II.

OBLIGATIONS AND RIGHTS OF WAREHOUSEMAN UPON THEIR RECEIPTS.

240. OBLIGATIONS ON DEMAND.] § 8. A warehouseman in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien.

(b) An offer to surrender the receipt properly endorsed.

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

241. JUSTIFIED IN DELIVERING GOODS—WHEN.] § 9. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent.

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him on order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

242. WHEN LIABLE FOR CONVERSION, ETC.] § 10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouse-

man shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

243. FAILURE TO TAKE UP RECEIPT ON DELIVERY.] § 11. Except as provided in section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

244. DUTY ON DELIVERY OF PART.] § 12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

245. ALTERATION OF A RECEIPT.] § 13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraud-

ulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

246. RECEIPT LOST OR DESTROYED—PROCEEDINGS.] § 14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

247. "DUPLICATE" RECEIPT—EFFECT OF.] § 15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability.

248. WHEN WAREHOUSEMAN EXCUSED FROM LIABILITY.] § 16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the

warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

249. WHEN SEVERAL CLAIM TITLE.] § 17. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

250. WHEN CLAIMS ARE ADVERSE.] § 18. If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

251. TITLE OF THIRD PERSON AS DEFENSE.] § 19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

252. LIABILITY ON ACCOUNT OF NON-EXISTENCE OF GOODS, ETC.] § 20. A warehouseman shall be liable to the holder of a receipt for damages caused by non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statement, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

253. LIABILITY FOR ANY LOSS OR INJURY.] § 21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to

them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

254. SHALL KEEP GOODS SEPARATE.] § 22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

255. AUTHORITY TO MINGLE FUNGIBLE GOODS.] § 23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

256. LIABLE FOR DELIVERY OF SEVERAL SHARES.] § 24. The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had be [been] kept separate.

257. CANNOT BE ATTACHED, UNLESS RECEIPT IS SURRENDERED TO WAREHOUSEMAN.] § 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

258. ATTACHMENT OF RECEIPT.] § 26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law

or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

259. LIEN OF WAREHOUSEMAN—FOR CHARGES, ETC.] § 27. Subject to the provisions of section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

260. HOW LIEN ENFORCED.] § 28. Subject to the provisions of section 30, a warehouseman's lien may be enforced—

(a) Against all goods whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

261. HOW LIEN LOST.] § 29. A warehouseman loses his lien upon the goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

262. NEGOTIABLE RECEIPT—CHARGES—LIEN.] § 30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

263. MAY REFUSE TO DELIVER, UNTIL LIEN IS SATISFIED.] § 31. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

264. WAREHOUSEMAN HAS OTHER REMEDIES.] § 32. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

265. HOW LIEN SATISFIED.] § 33. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place. In accordance with the terms of a notice so given a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the warehouse where the lien was acquired, or at the election of said warehouseman at any public auction room or place in the county where such warehouseman is located.

After the time for the payment of the claims specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sales the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

266. PERISHABLE GOODS.] § 34. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reason-

able effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

267. REMEDY DOES NOT PRECLUDE OTHERS.] § 35. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

268. LIABILITY ENDS WHEN GOODS SOLD TO SATISFY LIEN.] § 36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods or to a holder of the receipt, given for the goods when they were deposited, even if such receipt is negotiable.

ARTICLE III.

NEGOTIATION AND TRANSFER OF RECEIPTS.

269. NEGOTIATED BY DELIVERY.] § 37. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or subsequent indorsee of the receipt has endorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are delivered to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

270. BY ENDORSEMENT.] § 38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a

specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

271. NON-NEGOTIABLE RECEIPT—TRANSFER.] § 39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the endorsement of such a receipt, gives the transferee no additional right.

272. NEGOTIABLE RECEIPT—WHO MAY NEGOTIATE.] § 40. A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

273. RIGHTS ACQUIRED WHEN RECEIPT NEGOTIATED.] § 41. A person to whom a negotiable receipt has been duly negotiated requires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

274. WHERE TRANSFERRED ONLY, WHAT RIGHTS ACQUIRED.] § 42. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the receipt is non-negotiable such person also acquires the right to notify the warehouseman in writing of the transfer to him of such receipt, and there-

by to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the written notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by notification in writing to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

275. TRANSFEREE MAY COMPEL INDORSEMENT—EFFECT.] § 43. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires the right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

276. WARRANTIES OF NEGOTIATOR.] § 44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine.

(b) That he has a legal right to negotiate or transfer it.

(c) That he had knowledge of no fact which would impair the validity of worth of the receipt, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

277. INDORSER IS NOT LIABLE FOR PRIOR OBLIGATIONS.] § 45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

278. PLEDGEE NOT WARRANTOR.] § 46. A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft

drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

279. WHEN VALIDITY IS NOT IMPAIRED BY UNAUTHORIZED NEGOTIATION.] § 47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

280. POSSESSION OF RECEIPT VALIDATES A SUBSEQUENT TRANSFER.] § 48. Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

281. STOPPAGE IN TRANSITU—RIGHT OF.] § 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

ARTICLE IV.

CRIMINAL OFFENSES.

282. GOODS NOT ACTUALLY RECEIVED—RECEIPT FOR.] § 50. A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars or by both.

283. FALSE STATEMENT IN RECEIPT.] § 51. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

284. DUPLICATE RECEIPT NOT SO MARKED.] § 52. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

285. GOODS HELD JOINTLY, ETC.—ISSUING RECEIPT WITHOUT STATING SUCH OWNERSHIP.] § 53. Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants, who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon con-

viction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

286. DELIVERING GOODS WITH A NEGOTIABLE RECEIPT OUTSTANDING.] § 54. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

287. TAKING NEGOTIABLE RECEIPT WITHOUT HAVING TITLE TO GOODS.] § 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

ARTICLE V.

INTERPRETATION.

288. RULES.] § 56. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

289. CONSTRUCTION OF ACT.] § 57. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

290. DEFINITIONS.] § 58. (1) In this act, unless the context or subject matter otherwise requires—

"Action" includes counter claim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature, or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"To purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

291. WHEN ACT DOES NOT APPLY.] § 59. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

292. REPEAL.] § 60. All acts of parts of acts inconsistent with this act are hereby repealed: *Provided, however*, that nothing in this act shall be construed to repeal any of the provisions of an act entitled, "An Act to regulate public warehouses and the warehousing and inspection of grain and to give effect to article thirteen of the Constitution of this state" (approved April 25, 1871, in force July 1, 1871),[1] except in so far as said last named act re-

[1] Sec. 189 *et seq.* of this chapter.

lates to warehouse receipts for property stored in public warehouses of Class C, or to repeal the provisions of an act entitled, "An Act providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A or Class B in the State of Illinois, and providing penalties for violation thereof" (approved May 11, 1901, in force July 1, 1901).[2]

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[2] Sec. 215 *et seq.* of this chapter.

APPENDIX IV.

Commodity Exchange Act.

Sections dealing with boards of trade.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose: *Provided,* That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Secretary of Agriculture.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the

parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period of the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 5a. Each contract market shall—

(1) promptly furnish the Secretary of Agriculture copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

(2) allow inspection at all times by any authorized representative of the United States Department of Agriculture or United States Department of Justice of the books, records, and all minutes and journals of proceedings of such contract market, its governing board and all committees, and of all subsidiaries and affiliates of such contract market, which books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct;

(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the United States Department of Agriculture or United States Department of Justice;

(4) when so directed by order of the Secretary of Agriculture, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, he shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as he finds will prevent or tend to prevent such "squeezes" and market congestion: *Provided, however,* That such order shall not apply to then existing contracts;

(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract

to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, he shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as he finds will prevent or diminish such unfair practices: *Provided, however,* That such order shall not apply to then existing contracts;

(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated; and

(7) require that receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes.

SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules and regulations of the Secretary of Agriculture thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract market" in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary

of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided*, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the

evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further,* That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

* * *

SEC. 6a. (1) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership

and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the circuit court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

(2) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any board of trade, or any director, officer, agent, or employee of any board of trade is violating or has violated any of the provisions of this Act or any of the rules or regulations of the Secretary of Agriculture thereunder, or any order issued by the commission pursuant to any provision of this Act, the commission, in lieu of revoking the designation of such board of trade as a "contract market" may, upon notice and hearing and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such board of trade, director, officer, agent, or employee shall cease and desist from such violation or violations, and if such board of trade, director, officer, agent, or employee, thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such board of trade, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more

than $10,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such order continues shall be deemed a separate offense.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

• • •

SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471, 473

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP,

Petitioners,

VS.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

IRVIN ROOKS,
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Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership,
Petitioners.

January 6, 1947.

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 4004

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OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 156 Federal 2nd, page 33.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on June 7, 1946. (R. 262) Petition for Writ of Certiorari was filed September 6, 1946, and was granted October 21, 1946. The jurisdiction of this court is invoked under Section 240 of the Judicial Code of the United States, as amended. (Tit. 28 U.S.C., Sec. 347) The validity of Section 194b of the

Illinois Grain Warehouse Act (*Ill. Rev. Stat.* 1945, Ch. 114, Sec. 194b) is attacked on the ground of alleged repugnance to a federal statute.

The federal statute involved is the Commodity Exchange Act (Tit. 7 U.S.C., Sec. 1 et seq.), set forth in the Appendix (*infra* p. 31). Only Sections 5, 5a, 5b, 6, 6a, 6b, 7 and 12 deal directly with boards of trade.

STATEMENT OF THE CASE

On July 28, 1944, Daniel F. Rice & Co.[1] a grain commission merchant, on behalf of its customers as farmers, grain dealers and processors, filed a complaint with the Illinois Commerce Commission[2] against public grain warehousemen in the Chicago terminal area, and against the Board of Trade of the City of Chicago.[3]

The Rice complaint charged these warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions and state constitutional requirements.[4]

The board was joined as a defendant to the end that the improvement sought in warehousing practices could be in part achieved through board rules and regulations (R. 10-19)

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[1]An Illinois partnership, hereinafter referred to as "Rice".

[2]An administrative board established under the Illinois Public Utilities Act with comprehensive regulatory powers over public utilities. Hereinafter referred to as "Illinois Commission".

[3]Hereinafter referred to as "board".

[4]An injunction against the Illinois Commission was sought in a separate proceeding by some of the defendant warehousemen. Review of the Circuit Court of Appeals' judgment in that companion case has been granted in No. 470, 472, October Term, 1946, *Illinois Commerce Commission, et al.*, v. *Great Lakes Elevator Corporation, et al.*

The Rice complaint makes the following allegations with respect to the board:

> "15. The Chicago Board of Trade has formulated and adopted Rules and Regulations governing its maintenance as a commercial grain exchange. Those rules and regulations should be such as to promote the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market. In fact, however, the Rules and Regulations adopted by the Chicago Board of Trade are uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory.
>
> "16. The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain Warehouse Act."

Relief against the board is sought as follows:

> "Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific."

A motion to dismiss the proceeding was filed with and denied by the Illinois Commission, and the cause set for hearing commencing October 24, 1944. (R. 20-4) Thereupon, the board filed a bill in the District Court of the United States to enjoin members of the commission and Rice from further prosecuting the proceeding before the commission. The injunction was sought on the ground that the federal

government, by the Commodity Exchange Act (Tit. 7 U.S. C., Sec. 1 *et seq.*), has "fully and completely occupied and preempted the field of regulation of boards of trade", and thereby superseded and nullified the Constitution and all laws of Illinois or regulations of the Illinois Commission with respect to the operation of the board. (R. 6, 7) Motions to strike the complaint and dismiss the proceeding were filed by the Attorney General of Illinois and by Rice. (R. 212-20) Such motions were allowed, and an order was entered by the District Court on June 26, 1945, dismissing the complaint. (R. 223-5)

Appeals were taken to the Circuit Court of Appeals for the Seventh Circuit, and on June 7, 1946, that court reversed the District Court with directions to overrule the motions to strike the complaint. (R. 261)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

1. In holding that the state requirement of prior state commission approval of rules and regulations of the board which relate to the warehousing or custody of grain and the use of custodian receipts, is in irreconcilable conflict with the limited and circumscribed control of boards of trade provided by the Commodity Exchange Act.

2. In holding that by the Commodity Exchange Act, Congress intended and expressly provided for exclusive federal control and authority over the board.

3. In holding that Congress, by the Commodity Exchange Act, has invaded the precise field occupied by the Illinois Commission by reason of Section 194b of the Illinois Grain Warehouse Act, and has rendered that state authority inoperative.

4. In reversing the order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

ARGUMENT

I

THE ONLY STATE AUTHORITY HERE INVOLVED IS THE POWER TO DISAPPROVE BOARD RULES RELATING TO THE WAREHOUSING AND CUSTODY OF GRAIN AND THE USE OF CUSTODIAN RECEIPTS. NO CLAIM OF GENERAL REGULATORY JURISDICTION OVER THE BOARD HAS BEEN ASSERTED.

The board was organized as a commodity exchange under a special legislative act of the Illinois General Assembly in 1859. (R. 28-30) It provides an establishment where actual grain is bought and sold, and where trading in grain futures contracts is conducted. Under the Commodity Exchange Act, futures trading can be conducted only at an exchange which has been designated as a "contract market". The Secretary of Agriculture[5], the administrator of the Commodity Exchange Act, has designated the board as a contract market. Under the federal act, contract markets must meet certain minimal conditions of trade and comply with specified legislative requirements which will hereinafter be discussed.

Trading in futures consists of making contracts for the purchase or sale of grain for delivery at a future date called the delivery month. Most futures contracts are liquidated before the delivery month by offsetting futures trades, but a very small number are settled by delivering to the purchaser during the delivery month the grain called for by his futures contract: *Board of Trade* v. *Olsen*, 262 U.S. 1, 11, 36 (1923). Such delivery is made by tendering warehouse receipts issued by public warehouses "declared regular" by the board. (Rule 281; R. 96) Warehouses to be declared regular must comply with conditions prescribed

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[5]Hereinafter sometimes referred to as "secretary."

by regulations of the board. (Rules 281, 1620-36; R. 96, 155-9) In addition to public warehouses, there are many private warehouses in the Chicago area which do not normally store grain for others. The board has established a custodian department which supervises the storage of grain in, and regularizes the issuance of receipts by such private warehouses—called custodian receipts. (Rules 1230-42; R. 139-43)

The board has promulgated rules affecting warehouses. These rules bear upon the warehousing practices which are in issue before the Illinois Commission. For example:

Rule 1620 fixes maximum elevation and storage charges. (R.155) Rice, in his action against the warehousemen, asked the Illinois Commission to fix reasonable and non-discriminatory rates.

Rule 1626 requires warehouses to provide modern improvements and appliances. (R. 156) Rice sought to have the Illinois Commission fix and prescribe safe and adequate warehousing facilities and service.

Rule 1636 covers the release of transit billings by warehousemen to receipt holders. (R. 158) In the warehouse suit Rice charged that warehousemen are trafficking in transit billing, and discriminating against public receipt holders by retaining the more favorable transit billing for their own use.

Rule 1621A requires parent corporations to guarantee a subsidiary's warehouse receipts. (R. 155) An affiliate transaction is involved which may definitely affect the financial soundness of a utility enterprise. The Illinois Commission is granted specific authority over such affiliate transactions, and Rice invoked that authority.

Finally, rules 1230 through 1242 provide for the custody of grain in private warehouses and establish the board's

custodian department. (R. 139-43) These latter regulations were submitted to and approved by the Illinois Commission in 1933 as a means of securing commission authorization to designate the board's weighmaster as a state official so that he might act as registrar of custodian receipts.[4] This arrangement was sought by the board in order to make such receipts eligible for rediscount under Federal Reserve Board requirements. The Illinois Commission approved the arrangement. An employee of the board is acting in the capacity of a state official, yet paradoxically the board, while accepting this advantage denies the exercise of any authority by the state or the Illinois Commission, including the authority to approve the very rules that established the board's custodian system.

The above rules, illustrative of the board's activities affecting warehouses, as we will later demonstrate, are in no respect subject to the approval or control of the federal agency acting under the Commodity Exchange Act, nor is the adoption of such rules in any way required or restricted by that act.

The Illinois Commission, a state public utility regulatory body, with express jurisdiction over public grain warehouses, has been delegated specific authority to approve or disapprove board rules relating to the public warehousing or private custody of grain and the use of custodian receipts. Such authority is contained in Section 194b of the Illinois Grain Warehouse Act[5], as follows:

> "No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain,

[4] In the matter of Board of Trade, Ill. C. C. Doc. 22440 and 22441 (1934).

[5] *Ill. Rev. Stat.* 1945, Ch. 114, Sec. 194b.

> shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective."

The state regulatory authority thus created is extremely narrow in scope. No attempt is made to regulate boards of trade as such. Nor is authority conferred to pass upon *all* board rules, but *only those relating to warehousing and custody of grain, and the use of custodian receipts.* Furthermore, the Illinois Commission cannot initiate or prescribe a rule, but may only approve or disapprove rules prepared and submitted by the board. The only purpose of Section 194b is to make more effective the Illinois Commission's comprehensive regulation of public grain warehousemen.

The relief sought in the Rice complaint is to have "such rules" which relate to warehousing and custody of grain, and the use of custodian receipts declared inoperative unless submitted to and approved by the Illinois Commission. Counsel for the board misconceives the issues involved by arguing that Rice has asked the Illinois Commission to assume jurisdiction over rules of the board "covering its maintenance as a commercial grain exchange". (Ans. to Pet. for Writ of Cert. p. 2) The Illinois Commission does not have such authority. Nowhere is such authority claimed.

The only issue presented to this court is whether the Commodity Exchange Act has superseded the narrow state requirement under Section 194b with respect to board rules relating to warehousing and custody of grain, and the use of custodian receipts. Respondent's bill for injunction seeks to restrain the enforcement of state laws, "especially the provision of Section 194b". (R. 9) The District Court

and the Circuit Court of Appeals dealt solely with the question of supersedure of Section 194b. (R. 224, 260) The Illinois Commission is powerless to exercise regulatory authority beyond what is expressly delegated in Section 194b. The court will not presume that a state body will usurp authority.

II

FEDERAL NULLIFICATION OF STATE AUTHORITY RESULTS ONLY WHERE THERE IS A PRECISE COINCIDENCE OF REGULATION, OR AN IRRECONCILABLE CONFLICT IS CLEARLY DEMONSTRATED.

We have discussed the principles established by this court in supersedure cases in Section I of our brief in the companion warehouse case,[8] and shall not here repeat that argument or the decisions cited.

This court has repeatedly held that an intent by Congress to supersede and invalidate the exercise of the state's police power must be clearly manifested and will never be presumed or implied. In determining whether the federal act supersedes an otherwise valid exercise of state powers, this court has required that there be a precise coincidence of federal and state regulatory control, or in the absence of federal authority over the precise subject matter, then state authority will be superseded by federal action only if there exists a repugnance or conflict between the two acts so "direct and positive" that they cannot be "reconciled or consistently stand together." Congress may regulate in the general field and may circumscribe its authority and occupy only a limited portion of that field. In that event the states are free to regulate outside the limited field subject to federal authority.

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[8] *Illinois Commerce Commission v. Great Lakes Elevator Corporation*, Docket No. 470, 472, October Term, 1946, pp. 12-26.

When supersedure is the issue, the court seeks to harmonize and reconcile the two systems and will invalidate state authority only when it is demonstrated that an actual —not a speculative or fanciful—conflict with federal action exists.

III

CONGRESS HAS LIMITED AND CIRCUMSCRIBED ITS CONTROL OVER BOARDS OF TRADE. THE INVOKED ILLINOIS REGULATION HAS NOT BEEN SUPERSEDED OR INVALIDATED.

A. The Commodity Exchange Act is of limited scope.

Counsel for respondent has urged that the Commodity Exchange Act fully, completely and exclusively regulates the board and preempts and excludes any state control.

The Circuit Court of Appeals, as a basis for decreeing nullification of state regulation, held (R. 259):

> "The Board of Trade relies upon the Commodity Exchange Act (§§ 1-17 (a), Title 7 U.S.C.A.) as conferring upon the Secretary of Agriculture exclusive jurisdiction of all regulatory authority over it and similar instrumentalities. The provisions of the Act as well as the rules and regulations promulgated under the authority contained therein are lengthy and we think it is not necessary to set them forth or discuss them in detail. It is sufficient to state that we have given them careful consideration and think that Congress *intended and expressly provided for exclusive federal control and authority over the agencies to which the Act is applicable, including the Board of Trade.*"[9]

This holding, we submit, is erroneous, as demonstrated by a reading of the federal act, and is directly in conflict

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[9]Italics in quotations throughout this brief have been supplied for emphasis.

with this court's decision in *Dickson* v. *Uhlmann Grain Co.*, 288 U.S. 188 (1933). That case involved a suit by a futures broker against a customer for commissions and advances resulting from the purchase and sale of grain futures contracts on the Chicago, Minneapolis and Winnipeg exchanges.

The transactions between the customer and the broker were conducted within the state of Missouri. In defense it was urged that grain futures trading of the type involved was declared illegal by Missouri law. The broker denied that the transactions were fictitious or gambling, and hence illegal under state law, and further argued that the Grain Futures Act (which was later amended and became the Commodity Exchange Act) exclusively occupied the field and therefore superseded the state law invoked. The court stated the broker's contention on this latter issue as follows (p. 192):

> "That The Grain Futures Act superseded all relevant state laws relating to the subject of dealings in futures on 'contract markets,' and that the transactions in question, being valid under the federal Act, were necessarily valid under the laws of Missouri."

The validity of state regulation was upheld by a unanimous court.[10] Mr. Justice Brandeis rendered the opinion and pointed out that the parties had complied with the requirements of federal law with respect to futures trading; that two contracts were involved, one between the broker and his customer, executed in Missouri, and the other between brokers on the Chicago or other exchanges; that "There is no suggestion that these contracts violated the laws of the place where the exchange was situated" (p. 193); but that in view of the Missouri law, which had not been superseded, the contract executed in Missouri

[10]Three justices dissented on another ground, but expressly agreed with the majority on the question of supersedure (p. 206).

was not enforceable. On the question of supersedure, the court held (pp. 198-200):

> "The Grain Futures Act did not supersede any applicable provisions of Missouri law making gambling in grain futures illegal. * * *
>
> "The Federal Act declares that contracts for the future delivery of grain shall be unlawful unless the prescribed conditions are complied with. It does not provide that if these conditions have been complied with the contracts, or the transactions out of which they arose, shall be valid. It does not purport to validate any dealings. *Nor is there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all State legislation in any way dealing with that subject is superseded.* The purpose of the Grain Futures Act was to control the evils of manipulation of prices in grain. Such manipulation, Congress found, was effected through dealings in grain futures. See Board of Trade v. Olsen, 262 U.S. 1, 32. Many persons had advocated, as a remedy, that all future trading be abolished. Congress took a less extreme position. It set up a system of regulation and prohibited all future trading which did not comply with the regulations prescribed. But it evinced no intention to authorize all future trading if its regulations were complied with. Both the language of the Act and its purpose are clear; and they indicate the contrary. The Missouri law is in no way inconsistent with the provision of the Federal Act. It does not purport to legalize transactions which the Federal Act has made illegal. It does not prescribe regulations for exchanges. Obviously, manipulation of prices will not be made easier, or the prevention of such manipulation be made more difficult, because the State has declared that certain dealings in futures are illegal and has forbidden the maintenance within its borders of places where they are carried on. Since there is nothing in the state law which is inconsistent with, or could conceivably inter-

> fere with the operation or enforcement of, the federal law, the statute of Missouri was not superseded."

It is thus evident that federal legislation provides only a limited form of control and imposes specific minimum requirements as a condition to legalized futures trading. Such a statute makes obvious the congressional purpose to preserve the additional protection afforded by the exercise of state functions in furtherance of the public interest. State regulation which legalized transactions declared unlawful by the federal act would be superseded since then only would an inconsistency occur.

Another case which holds that the federal statute is not comprehensive in scope and does not provide for general regulation of boards of trade is *State* v. *Christopher*, 318 Mo. 225, 2 S.W. (2d) 621 (1928) (cited with approval in the *Dickson* case). In determining whether a state statute was superseded, the Missouri court said (p. 628 of 2 S.W. (2d)):

> Congress "carefully, studiously, chose the ground where the disturbance of interstate commerce [evils of speculation and gambling in grain futures] was *proved*, and where its action might prevent that disturbance. *There was no general regulation* or attempted regulation of the trade which might affect interstate commerce. *Specific features incidental to future trading are carefully selected and enumerated.*"

It is clear that Congress did not provide complete and exclusive regulatory control over boards of trade. Care and diligence was exercised to impose only specific requirements and specific prohibitions to accomplish a restricted and limited regulatory purpose. State control outside the limited field occupied is clearly permissive.

The amendments that were made to the Grain Futures Act in 1936 and the accompanying change of title to Com-

modity Exchange Act did not broaden the federal legislation into a comprehensive or exclusive regulatory system. The amendments remedied defects in control that were unearthed during the previous twelve years of experience.[11] No broad change in purpose, objective or scope of the act is discernible. The present Commodity Exchange Act effects control by prohibiting all futures trading except where executed through registered futures commission merchants and brokers trading on boards of trade designated as contract markets by the secretary.

In addition, specific manipulative devices and fraudulent practices that have led to excess speculation are prohibited. For example, daily trading limits and net speculative positions may be prescribed (Sec. 4a); fraud and false reports are prohibited (Sec. 4b); wash sales, cross trades and other fictitious sales are declared unlawful (Sec. 4c); customers' funds must be segregated (Sec. 4d).

A board of trade may be designated as a contract market where futures trading is permitted when the following conditions exist:

a) A sufficient volume of cash transactions occurs to reflect the general value of the commodity. (Sec. 5(a))

b) Records are maintained and reports filed of the totals of cash and futures transactions. (Sec. 5(b))

c) The governing board prevents the dissemination of false reports and the manipulation of prices. (Secs. 5(c) and 5 (d))

d) The governing board assures membership to cooprative associations. (Sec. 5(e))

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[11]1935 Annual Report of the Chief of the Grain Futures Administration to the Secretary of Agriculture, p. 7.

Designated contract markets must then meet the following few requirements:

a) "Furnish" the secretary with copies of all rules and regulations and changes therein. (Sec. 5a(1))

b) Allow the inspection of its books by the secretary. (Sec. 5a(2))

c) Require regular warehousemen to make reports, keep records and allow "visitation" by the secretary. (Sec. 5a(3))

d) Provide for a delivery period and delivery notice on futures contracts. (Sec. 5a(4), 5a(5))

e) Require that delivery of commodities on futures contracts conform to United States standards. (Sec. 5a(6))

f) Require that receipts of federally licensed warehouses be accepted as delivery on futures contracts "made on or subject to the rules of such contract market, without discrimination * * *", and notwithstanding no state license is possessed, provided the warehouse meets reasonable requirements as to accessibility and suitability for delivery purposes. (Sec. 5a(7))

The above summary presents the totality of federal control exercised through the Commodity Exchange Act. Clearly the statute is restricted and limited, rather than comprehensive in scope. The act does not even completely regulate the field of futures trading, which is its primary objective. The secretary cannot impose or regulate margin requirements, limit the daily price fluctuations in the market, order a settlement of outstanding futures contracts in the event of a market squeeze or corner, impose trading rules either of futures or cash grain, or regulate brokerage and clearing commissions. The board has promulgated many rules dealing with these subjects, and such rules, even though directly affecting futures trading, are immune from

federal control,[12] and we may add, are also immune from state control. The state has not asserted regulatory authority over this type of board rule, nor has the state sought to prescribe regulations for boards of trade.

Congress intended to occupy only a limited portion of the field of regulation of boards of trade. State regulation effected by Section 194b of the Illinois Grain Warehouse Act lies outside that limited field and is therefore not forbidden or displaced.

B. Co-existing state regulation has been expressly recognized and sanctioned by the federal act.

The position taken by the court below that "Congress intended and expressly provided for exclusive federal control" (R. 259) is refuted not only by the limited provisions of the federal act, but also by express provisions of the statute which manifest a congressional intent to preserve state control. In Section 12 of the Commodity Exchange Act it is provided that:

> "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *."

Congress thus recognized the existence of state authority in this field partially covered by federal enactment, and authorized the secretary to draw assistance from and lend assistance to any state authority in furtherance of the congressional purpose. As this court recently said in *Union Brokerage Co.* v. *Jensen*, 322 U.S. 202, 209 (1944):

> "Where the government has provided for collaboration the courts should not find conflict."

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[12]Rules 210-6, 1822A—Margin requirements (R. 74-5, 179); Rule 1823A—Limits on daily price fluctuations (R. 179-80); Rules 251, 1852, 1854-6—Settlements and defaults (R. 65, 186-91); Rules 251-9, 350-5—Trading rules (R. 91-3, 116-7); Rules 220-41—Brokerage commissions (R. 76-90).

If state regulation had been wholly excluded, there would be no occasion for cooperation. The court has repeatedly emphasized the significance that attaches to federal provisions calling for cooperation with state officials. In *Townsend* v. *Yeomans*, 301 U.S. 441 (1937), a Georgia statute fixing rates of tobacco warehousemen was upheld against claimed supersession by the broad federal Tobacco Inspection Act. The federal act provided that the secretary "may cooperate with * * * any State * * * or political subdivision thereof". (7 U.S.C, Sec. 511m) The court said (p. 454):

> "Instead of frustrating the operation of such state laws, the provisions of the Act expressly afforded and emphasized the opportunity for cooperation with the States in protecting the farmers' interests. In this view we find no ground for the contention that Congress has taken possession of the field of regulation to the exclusion of state laws which do not conflict with its own requirements."

Another provision of the federal act is pertinent in this regard. At the conclusion of Section 4c of the Commodity Exchange Act, the following proviso occurs:

> "Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections."

The involved federal sections prohibit fraud, deceit, the making of false reports, the execution of wash sales, cross trades and other fictitious sales, and the trading in privileges.

As to these specific subjects of federal regulation, Congress authorized state control even though in actual conflict with federal provisions. Congress thus permitted the exercise of state authority even over matters and transactions specifically prohibited by Congress.[11]

[11] H. Rept. No. 421 to 74th Cong., 1st Sess. on H. R. 6772, page 5.

Respondent in the court below took the position that because of these two express reservations of state authority, an implication exists that all other state regulation has been superseded. Such reasoning overlooks the fact that Section 4c preserves state control even where there is direct overlapping and conflict. Transactions of the type covered by the federal act are declared unlawful by many states. Since the specific subject matter is covered by both state and federal authority, inevitable conflict and consequent supersedure would result in the absence of a provision expressly preserving state control. But no such provision is necessary to preserve state power when no conflict exists, and therefore Congress made none. Congress used great care to preserve state authority even when in conflict, and thus made it obvious that non-conflicting state authority was intended to be left undisturbed.

It is a significant indication of the congressional intent that in the Commodity Exchange Act the states are referred to only twice. In one reference Congress guards against supersedure of state law as to specific subjects covered by federal law (Sec. 4c), and in the other authorizes cooperation with existing state authority. (Sec. 12)

Of pertinence in connection with the claimed supersedure of state regulation is the fact that the respondent board has on numerous occasions recognized the jurisdiction of the Illinois Commission. In paragraph 3 of respondent's motion to dismiss, filed with the Illinois Commission on August 31, 1944, it is alleged (R. 21):

> "While this defendant has always complied with Section 194b of the Illinois Grain Warehouse Act • • • and has always complied in all respects with the laws of the State of Illinois and the orders of this Commission, nevertheless this action requires this defendant to assert, as it here asserts, that said Commodity Exchange Act" supersedes and nullifies the constitution and all laws of Illinois dealing with the board.

In other words, when state regulation was an advantage in the past, the board acquiesced and even applied to the Illinois Commission for authorizations; but when confronted with a request for regulation and revision of alleged inequitable and unreasonable warehousing practices, the board suddenly discovers that state control is invalid and has been superseded. Furthermore, it has not been alleged that the exercise of this state authority in the past has resulted in any conflict with federal law or requirements.

C. The invoked state authority validly controls a specific subject matter of regulation not occupied by or repugnant to federal statutes.

Respondent has not urged that the secretary has authority to pass upon, approve or disapprove board rules and regulations relating to warehousing, for indeed no such statutory authority exists. The Circuit Court of Appeals, however, went far beyond respondent's position and erroneously held (R. 261):

> "We therefore are of the view that Congress has invaded the *precise field* occupied by the Illinois commission by reason of § 194(b) of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The court misconceived and misconstrued the provisions, scope and character of the Commodity Exchange Act.

1. *References to warehouses in the federal act.*

The federal act refers to warehouses in only two instances, and then only warehouses declared "regular" as facilities from which delivery on futures contracts may be made. The references to such warehouses in the federal act are:

Section 5a(3), which reads in part:

> "Each contract market shall—
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> • • • •
>
> "(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe. • • •"

This provision obviously is intended to afford the secretary information about "regular" warehouses in furtherance of his supervision of futures trading. It imposes no operating requirements upon such warehouses, aside from the keeping of records and reports, presumably of deliveries on futures contracts and grain stored pursuant thereto.

No issue raised by the Rice complaint has even a remote connection with or raises the slightest question about the keeping of records, the making of reports or allowing the secretary to visit a warehouse. We seek the correction of board rules which are alleged to be "uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers • • •." (R. 18)

Under the state act a board rule dealing with warehouse reports and records would relate to warehousing and therefore would have to be submitted to the Illinois Commission for approval. It is inconceivable that the commission would disapprove any reasonable rule which sought to fulfill the federal requirement. The possibility of such disapproval is far-fetched and improbable, but in any event would be subject to state judicial review and unquestioned judicial condemnation. Actually, even though the board has operated under Section 5a(3) for the last ten years, compliance

with the federal act has been achieved without specific rules requiring warehouse reports to be made and records to be kept. No occasion for the exercise of state authority has arisen.

Section 5a(7) contains the second reference to warehouses. It provides that:

> "Each contract market shall—
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> • • • •
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> "(7) require that receipts issued under the United States Warehouse Act shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

This section has as its sole purpose the prevention of discriminations by contract markets against warehouses which possess only federal licenses.[14] These warehouses are given the same status, for future deliveries, as the state licensed warehouses, but both federal and state houses continue to be subject to all rules of the board and to all applicable laws, as long as such rules and laws are applied "without discrimination". The board itself has adopted rule 1623,

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[14] 80 Cong. Rec. 6834, 74th Cong., 2nd Sess., April 4, 1936.

which fully accords with our position.[15] That regulation provides (R. 156):

> "Any regular warehouse may be declared to be irregular by the Board at any time for violation of the laws of Illinois or the Rules or Regulations of the Association."

The two limited references to warehouses in the Commodity Exchange Act bear out the fact that the federal act is primarily, if not entirely concerned with futures trading, and not warehouse regulation. The federal act touches upon warehouses only incidentally, and does not deal with the subject matter of state control invoked by the Rice complaint. We have sought the establishment of reasonable warehouse rates, the elimination of discriminatory rates and practices, the provision of safe and adequate warehousing service and facilities, and the maintenance of sound financial arrangements by warehousemen. If the board adopted regulations dealing with warehouse rates and service—as it has from time to time—there would be no federal provision in any way bearing upon, restricting or influencing such regulations. Submission of such regulations to the Illinois Commission for approval would constitute the only existing regulatory force over the board.

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[15]Counsel for the board, in testimony before the Senate Committee on Agriculture and Forestry, when Section 5a(7) was proposed as an amendment to the federal act, said in answer to a question by Senator Norris (Hearings on H.R. 6772, 74th Cong., 2nd Sess., April 21-3, 1936, pp. 102, 104):

> "• • • the amendment proposed by the Secretary [which became Section 5a(7)] does not provide that Congress has occupied the field. It only provides that Federal warehouses, the receipts from Federal warehouses, may be used in settlement of grain contracts.
>
> • • • •
>
> "This proposal of the Secretary merely provides that boards of trade legalize receipts from warehouses having solely a Federal license. There is no intent in this act to preempt Federal regulation and exclude State regulation."

Furthermore, the warehouses referred to in Sections 5a(3) and 5a(7) are warehouses that are declared "regular" for delivery of grain on futures contracts. There are other types of warehouses and warehousing functions which are no part of the futures delivery mechanism, and for which the board has adopted regulations, such as:

a) Warehousing of public grain in houses that *have not been designated as regular* for delivery of grain in satisfaction of futures contracts.

b) Custody of grain in *private* warehouses, and control of custodian receipts.

c) Warehousing of actual grain which is not used in connection with futures trading or deliveries on futures contracts.

d) The rates and practices under which actual grain is stored and handled by warehousemen.

Certainly, state supervision is unimpeded as to rules dealing with such warehouses and functions, or with regular warehouses on matters other than those specifically covered by the narrow requirements of Sections 5a(3) and 5a(7). No encroachment upon federal control is involved, since no federal control can be exercised.

2. *References to board rules in the federal act.*

The specific federal requirements and conditions imposed upon the board in its capacity as a contract market may very well necessitate the adoption of rules to evidence compliance therewith. In many, but not all instances, the board has adopted such rules. Evidence of compliance by the board has been supplied largely by a general rule requiring all members to comply with the lawful provisions of the Commodity Exchange Act. (Rules 603, 1828; R. 118, 180) The federal requirements, however, relate largely to futures trading, and not to warehousing, except in the two respects discussed above. Thus, the federal act requires the board

to provide a delivery period and delivery notice in the contract month covering the satisfaction of futures contracts when directed by the secretary (Secs. 5a(4) and 5a(5)); that futures contracts shall be settled by the delivery of commodities conforming to United States grade standards (Sec. 5a(6)); for the filing by members of reports of all cash and futures transactions (Sec. 5(b)); for the prevention of manipulation and corners and the dissemination of false rumors (Secs. 5(c) and 5(d)). These requirements, as we pointed out, deal entirely with phases of futures trading and not with warehousing. They have no bearing upon the issue of state regulation here involved.

The specific references by the Commodity Exchange Act to rules of boards of trade in no way impede the full exercise of state authority over rules relating to warehousing.

Section 5a(1) requires each contract market to "furnish" the secretary with copies of all rules and changes therein. It will be observed that this provision does not grant the secretary the power to approve or disapprove, prescribe or in any way revise such rules. Neither does the provision contain any requirement with respect to the contents of a rule adopted. It has not been urged by respondent that this section gives the secretary the power to approve or disapprove board rules, yet that is the function with respect to warehousing rules which the Illinois Commission is being asked to perform.

The federal provision is vastly different from the requirement under state law that certain rules receive the approval of the Illinois Commission before they may become effective. The state commission is thus authorized to exercise affirmative regulatory control in furtherance of the public interest.

Section 5a(1) requires rules to be furnished the secretary solely for informational purposes, so that the secre-

tary may keep advised of existing rules to assure himself that there are no violations of the specific and limited requirements of the federal act. This section cannot in itself be the source of any conflict with state authority. If conflict exists it would only be the result of specific federal requirements imposed by other section of the act. In this regard there are only two narrow requirements dealing with warehousemen which have been imposed by Sections 5a(3) and 5a(7) of the federal act.

Sections 5(e) and 6a(2) deal with a phase of the federal requirement that boards of trade shall not exclude cooperative associations from membership. These sections provide that no rule of a contract market shall forbid the return of patronage dividends or the payment of commodity-unit compensation to cooperative members. We wish to emphasize that only with respect to these provisions dealing with cooperative associations is there any prohibition imposed by statute upon the contents of the board's rules. The subject of cooperatives or the handling of earnings of cooperatives has no relationship to our instant problem. This subject does not lie within the area of state regulation invoked and could not possibly result in conflict with the state requirement that rules relating to warehousing receive Illinois Commission approval.

Respondent has urged that these requirements with respect to the board's rules necessarily supersede state authority, since in *Board of Trade* v. *Wallace*, 67 F. (2d) 402 (C.C.A. 7th 1933) the board was suspended for sixty days by reason of a rule it had in effect. That case merely serves to illustrate the precise point we are here urging. The court in the *Wallace* case had under consideration a board rule which served to deny membership to a cooperative association. Here, then, was a rule which directly violated the only prohibition imposed upon such rules by

the federal act. Under such circumstances, enforcement of the act necessitated suspension until the rule was revised. The point we wish to make is that outside of the specific requirements or specific prohibition of the Commodity Exchange Act, the board is completely free to adopt any rule it sees fit, as long as a copy is furnished to the secretary.

The board rule dealing with cooperatives, as well as other board rules which may be adopted to meet specific federal requirements, do not bear upon the regulatory issues before the Illinois Commission, and do not relate to the warehousing and custody of grain, or the use of custodian receipts except for the two minor federal references to warehouses.

3. *State regulation does not impose conflict of duties upon the board.*

Respondent claims that a conflict exists between Section 194b of the Illinois Grain Warehouse Act and the Commodity Exchange Act and that compliance with state regulation would result in revocation of the board's designation as a contract market, and would subject it to federal penalties. (R. 7-8) These dangers and severities have been urged but not established. When the federal and state controls are placed side by side and analyzed, it is clear that there cannot be a demonstration of actual conflict, or danger of federal penalties, or of any impediment to the free operation of the federal act within its own orbit.

The state act requires board rules relating to warehousing and custody of grain to be submitted to the Illinois Commission for approval. The commission exercises a portion of the state's police power and its functions are limited and conditioned by the requirement that its actions be reasonable and in furtherance of the public interest. The Illinois Commission may only disapprove rules which the

board itself initiates, and then only after full hearings and a finding that the rule involved is inequitable or unreasonable in some substantial respect.

The Commodity Exchange Act seeks to promote fairness in futures trading and to eliminate excess speculation.

The board, according to the preamble to its rules, has as one of its objects "* * * to inculcate principles of justice and equity in trade". (R. 30) All three agencies thus seek the establishment of principles of justice and fairness, but in different fields.

If the board adopted a rule relating to warehousing and submitted it to the Illinois Commission and the rule was approved, the rule would then be furnished the secretary and the process ended. The board's status as a contract market would not be affected, nor would it be subject to penalties. Complete compliance with the Commodity Exchange Act would result by merely furnishing the secretary with the new rule.

But let us assume the new rule was disapproved by the Illinois Commission. Then there would be nothing to furnish the secretary and again no danger to the board and no conflict with federal control. In that event the board would unquestionably revise the rejected rule so that it would more nearly approximate a fair and reasonable provision. As has already been urged, it is highly improbable that the Illinois Commission would disapprove a reasonable rule promulgated by the board pursuant to the requirements of Sections 5a(3) or 5a(7). Should this occur, however, the ruling of the Illinois Commission would be subject to judicial review by the state courts. Even so, if conflict with the federal act was to result from such unlikely action by the Illinois Commission, the board could then claim supersedure. The attack would be against the single order of the Illinois Commission, and not against the

general regulatory authority conferred by section 194b of the Illinois statute.

If we reasonably assume that the board would not adopt a rule which would infringe its limited federal obligations, then the Illinois Commission could not pursue a course which would require the board to violate its federal duties. The Illinois Commission cannot initiate rules and impose them upon the board; it may only pass upon rules first adopted and submitted by the board.

The secretary has not been granted authority to approve or disapprove the board's warehousing rules. That regulatory function may be exercised only by the state. To the extent that state regulation improves the character, effectiveness and fairness of such rules, obviously the purpose of the Commodity Exchange Act would be furthered, no federal requirement would be infringed, no jeopardy to the board's status would result, and no conflict would exist. The federal agency cannot perform the regulatory function granted the Illinois Commission. To invalidate state authority would be to eliminate completely this form of regulation. The court cannot transfer or delegate that function to the secretary. Congress has not done so.

CONCLUSION

It is respectfully submitted that consideration of the Commodity Exchange Act reveals that state regulation has not been superseded or nullified. The only state authority here sought to be exercised is the approval or disapproval of board rules relating to warehousing and custody of grain, and the use of custodian receipts. No similar federal control exists. The board has many rules directly or indirectly related to warehousing and custody of grain. The federal act refers to warehouses in only two instances

by providing that the board require that regular warehouses keep records, file reports and allow visitation by the secretary; and by requiring that receipts of federally licensed regular warehouses be accepted without discrimination in satisfaction of delivery on futures contracts. As to all other warehousing matters, the board is completely free and clear of any federal control.

The Commodity Exchange Act is a limited and circumscribed statute which achieves only partial control of boards of trade and of futures trading. It does not expressly exclude state regulation, nor does it imply such exclusion through the establishment of a comprehensive and complete regulatory system, but instead has manifested an intent to preserve state control by expressly providing for cooperation with state agencies. State regulation involved will in no respect infringe federal policy or stand as an obstacle to the accomplishment of the purposes and objectives of Congress.

The legal principles of supersedure have been crystallized. This court has exercised a wise restraint in refusing to invalidate state legislation unless a definite federal requirement fully occupies the precise subject matter of state regulation invoked, or the state authority is repugnant and in actual rather than argued or speculative conflict with the federal system. No such factual situation exists in the instant case.

Limited federal regulation in a broad general field is not enough to nullify state authority. In the cases where supersedure has been decreed, state action has not been set aside on mere generalities, or on the basis of loose talk. It has required an actual demonstration of conflict between state and federal action. State control was not invalidated unless what the state required in the light of what Congress ordered directly entailed contradictory duties and made for

actual rather than argumentative inroads on what Congress commanded or forbade.

The order of the District Court properly denied injunctive relief, and should be sustained; and the order of the Circuit Court of Appeals for the Seventh Circuit should be reversed.

Respectively submitted,

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Petitioners.

January 6, 1947.

APPENDIXES.

APPENDIX

COMMODITY EXCHANGE ACT, AS AMENDED

[Grain Futures Act of September 21, 1922 (42 Stat. 998), as amended June 15, 1936 (49 Stat. 1491), April 7, 1938 (52 Stat. 205), and Oct. 9, 1940 (54 Stat. 1059); 7 U. S. C. 1-17a]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commodity Exchange Act."

SEC. 2 (a) For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "commodity" shall mean wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans and soybean meal. The term "future delivery," as used herein, shall not include any sale of any cash commodity for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia. The words "cooperative association of producers" shall mean any cooperative association, corporate or otherwise, not less than 75 per centum in good faith owned or controlled, directly or indirectly, by producers of agri-

cultural products and otherwise complying with an Act of Congress of February 18, 1922 (U. S. C., 1934 ed., title 7, secs. 291 and 292), as now or hereafter amended, including any organization acting for a group of such associations and owned or controlled by such associations, provided that business done for or with the United States of America, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with said Act of Congress of February 18, 1922. The words "member of a contract market" shall mean and include individuals, associations, partnerships, corporations, and trusts owning or holding memberships in, or admitted to membership representation on, a contract market or given members' trading privileges thereon. The words "futures commission merchant" shall mean and include individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. The words "floor broker" shall mean any person who, in or surrounding any "pit", "ring", "post", or other place provided by a contract market for the meeting of persons similarly engaged, shall engage in executing for others any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market, and who for such services receives or accepts any commission or other compensation. The words "the commission" shall mean the Commodity Exchange Commission, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and byproducts thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles

normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

SEC. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of commodities on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling commodities and products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in commodities and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

SEC. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of any commodity for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any

transaction in interstate commerce in any commodity or the products or byproducts thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, except, in any of the foregoing cases, where such contract is made by or through a member of a board of trade, which has been designated by the Secretary of Agriculture as a "contract market," as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 4a. (1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the commission shall, from time to time, after due notice and opportunity for hearing, by order, proclaim and fix such limits on the amount of trading under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market which may be done by any person as the commission finds is necessary to diminish, eliminate, or prevent such burden. Nothing in this section shall be construed to prohibit the commission from fixing different trading limits for different commodities, markets, futures, or delivery months, or different trading limits for buying and selling operations, or different limits for the purposes of subparagraphs (A) and (B) of this section, or from exempting transactions commonly known to the trade as "spreads" or "straddles" or from fixing trading limits applying to such transactions different from trading limits fixed for other transactions.

(2) The commission shall, in such order, fix a reasonable time (not to exceed ten days) after the order's promulgation; after

which, and until such order is suspended, modified, or revoked, it shall be unlawful for any person—

(A) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the commission in such order for or with respect to such commodity; or

(B) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market, any amount of such commodity that shall result in giving such person a net long or net short position at any one time in or with respect to any such commodity in excess of any trading limit fixed by the commission for net long or net short position in such order for or with respect to such commodity.

(3) No order issued under paragraph (1) of this section shall apply to transactions which are shown to be bona fide hedging transactions. For the purposes of this paragraph, bona fide hedging transactions shall mean sales of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity or, conversely, purchases of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such purchases are offset by sales of the same cash commodity. There shall be included in the amount of any commodity which may be hedged by any person—

(A) the amount of such commodity such person is raising, or in good faith intends or expects to raise, within the next twelve months, on land (in the United States or its Territories) which such person owns or leases;

(B) an amount of such commodity the sale of which for future delivery would be a reasonable hedge against the products or byproducts of such commodity owned or purchased by such person, or the purchase of which for future delivery would be a reasonable hedge against the sale of any product or byproduct of such commodity by such person.

(4) This section shall not apply to a person that is registered as a futures commission merchant or as a floor broker under authority of this Act only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof.

SEC. 4b. It shall be unlawful for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of (1) any contract of sale of any commodity in interstate commerce, or (2) any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of any contract market for or on behalf of any person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) to cheat or defraud or attempt to cheat or defraud such person;

(B) willfully to make or cause to be made to such person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

Nothing in this section or in any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders

at the market for different principals for a like quantity of cotton for future delivery in the same month, from executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange.

SEC. 4c. It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) if such transaction is, is of the character of, or is commonly known to the trade as, a "wash sale", "cross trade", or "accommodation trade", or is a fictitious sale;

(B) if such transaction is, is of the character of, or is commonly known to the trade as, a "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or

(C) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall not have been disapproved by the Secretary of Agriculture. Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections.

SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless—

(1) such person shall have registered, under this Act, with the Secretary of Agriculture as such futures commission merchant and

such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, whether a member or nonmember of a contract market, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers or resulting market positions, with the clearing-house organization of such contract market or with any member of such contract market, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: *Provided further,* That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, in obligations fully guaranteed as to principal and interest by the United States, and in "investment securities" as defined in and under authority of section 5136 of the Revised Statutes, as amended, and, subject to approval by the Secretary of Agriculture, may be loaned on the security of negotiable warehouse receipts conveying or securing title to readily marketable commodities to the extent of the current loan value of such receipts, such investments and loans to be made in accordance with such rules and regulations and subject to such conditions as the Secretary of Agriculture may prescribe.

SEC. 4c. It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any com-

modity for future delivery, on or subject to the rules of any contract market unless such person shall have registered, under this Act, with the Secretary of Agriculture as such floor broker and such registration shall not have expired nor been suspended nor revoked.

SEC. 4f. (1) Any person desiring to register as futures commission merchant or as floor broker hereunder shall be registered upon application to the Secretary of Agriculture, which application shall be made in form and manner to be prescribed by the Secretary of Agriculture, giving such information and facts as the Secretary of Agriculture may deem necessary concerning the business in which the applicant is or will be engaged, including, in the case of applications of futures commission merchants, the names and addresses of the managers of all branch offices and of all correspondents and agents engaged in soliciting or accepting on behalf of such applicant any orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any board of trade, and including also the names of its officers and partners, if a partnership, and of its officers, directors, and stockholders, as the Secretary of Agriculture may direct, if a corporation. Such person, when registered hereunder, shall likewise continue to report and furnish to the Secretary of Agriculture the above-mentioned information and such other information pertaining to his business as the Secretary of Agriculture may require. All registrations shall expire on the 31st day of December of the year for which issued, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked after notice and hearing as prescribed in section 4g of this Act.

(2) Any person registered as futures commission merchant hereunder shall post in a conspicuous place in each of the offices maintained by such person in the United States in which orders for the purchase or sale of any commodity for future delivery are solicited or accepted, the original or duplicate copy (issued by the Secretary of Agriculture) of such person's registration certificate as such futures commission merchant.

SEC. 4g. If any person registered hereunder as futures commission merchant or floor broker shall violate any of the provisions of this Act, or any of the rules or regulations of the Secretary of Agriculture thereunder, or shall fail or refuse to make any report required by the Secretary of Agriculture regarding the transactions of such person, or the transactions of the customers thereof, in com-

modities for future delivery on any board of trade in the United States or elsewhere, or shall fail or refuse to keep the books and records pertaining to such transactions in the form and manner required by the Secretary of Agriculture, or shall fail or refuse to keep such books and records open to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice, the registration of such person may be suspended or revoked after notice and hearing in accordance with the procedure and subject to the judicial review provided in paragraph (b) of section 6 of this Act.

SEC. 4h. It shall be unlawful for any person—

(1) to conduct any office or place of business anywhere in the United States or its territories for the purpose of soliciting or accepting any orders for the purchase or sale of any commodity for future delivery, or for making or offering to make any contracts for the purchase or sale of any commodity for future delivery, or for conducting any dealings in commodities for future delivery, that are or may be used for,

(A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or

(B) determining the price basis of any such transaction in interstate commerce, or

(C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof,

if such orders, contracts, or dealings are executed or consummated otherwise than by or through a member of a contract market; or

(2) falsely to represent such person to be a member of a contract market, or the representative or agent of such member, or to be a futures commission merchant registered under this Act, or the agent of such registered futures commission merchant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through any member of, any contract market.

SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on

or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary of Agriculture (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture. Such person shall also keep books and records of transactions coming within the provisions of (1) and (2) hereof, which books and records shall show complete details concerning all of such transactions, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the purpose: *Provided*, That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Secretary of Agriculture.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board,

or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 5a. Each contract market shall—

(1) promptly furnish the Secretary of Agriculture copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

(2) allow inspection at all times by any authorized representative of the United States Department of Agriculture or United States Department of Justice of the books, records, and all minutes and journals of proceedings of such contract market, its governing board and all committees, and of all subsidiaries and affiliates of such contract market, which books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct;

(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the United States Department of Agriculture or United States Department of Justice;

(4) when so directed by order of the Secretary of Agriculture, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, he shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as he finds will prevent or tend to prevent such "squeezes"

and market congestion: *Provided, however,* That such order shall not apply to then existing contracts;

(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, he shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as he finds will prevent or diminish such unfair practices: *Provided, however,* That such order shall not apply to then existing contracts;

(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated; and

(7) require that receipts issued under the United States Warehouse Act (U. S. C., 1934 ed., title 7, secs. 241-273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however,* That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes.

SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules and regulations of the Secretary of Agriculture thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract

market" in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided,* That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such

order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further*, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person (other than a contract market) is violating or has violated any of the provisions of this Act, or any of the rules and regulations made pursuant to its requirements, or has manipulated or is attempting to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any board of trade, he may serve upon such person a complaint stating his charges in that respect; to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the Secretary of Agriculture refuse all trading privileges to such person, and to show cause why the registration of such person, if registered as futures commission merchant or as floor broker hereunder, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Secretary of Agriculture or before a referee designated by the Secretary of Agriculture, which referee shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, of the Interstate Commerce Act, as amended and supplemented (U. S. C., 1934 ed., title 49, secs. 12, 46, 47, and 48), relating to the attendance and testimony of wit-

nesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, and said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received, the Secretary of Agriculture may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered as futures commission merchant or as floor broker hereunder, may suspend, for a period not to exceed six months, or revoke, the registration of such person. Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Secretary of Agriculture, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the Secretary of Agriculture be set aside. A copy of such petition shall be forthwith served upon the Secretary of Agriculture by delivering such copy to him, and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code, as amended.

SEC. 6a. (1) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and

agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however,* That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the circuit court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

(2) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis; or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any board of trade, or any director, officer, agent, or employee of any board of trade is violating or has violated any of the provisions of this Act or any of the rules or regulations

of the Secretary of Agriculture thereunder, or any order issued by the commission pursuant to any provision of this Act, the commission, in lieu of revoking the designation of such board of trade as a "contract market" may, upon notice and hearing and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such board of trade, director, officer, agent, or employee shall cease and desist from such violation or violations, and if such board of trade, director, officer, agent, or employee, thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such board of trade, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $10,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such order continues shall be deemed a separate offense.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 8. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of this Act, and may publish from time to time, in his discretion, the result of such investigation and such statistical information gathered therefrom as he may deem of interest to the public, except data

and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided*, That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary relative to the conduct of any board of trade or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further*, That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

SEC. 8a. The Secretary of Agriculture is authorized—

(1) to register futures commission merchants and floor brokers upon application in accordance with rules and regulations and in form and manner to be prescribed by the Secretary of Agriculture; and

(2) to refuse to register any person if such person has violated any of the provisions of this Act or any of the rules or regulations promulgated by the Secretary of Agriculture hereunder for which the registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked; and

(3) to suspend or revoke the registration of any futures commission merchant who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Secretary of Agriculture under the provisions of paragraph (b) of section 6 of this Act and the period of denial specified in such order shall not have expired; and

(4) to fix and establish from time to time fees and charges for registration and renewals thereof and for copies of registration certificates, not to exceed $10 for each such registration, renewal, or copy; and

(5) to make and promulgate such rules and regulations as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act; and

(6) to communicate to the proper committee or officer of any contract market and to publish, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Secretary of Agriculture disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers.

SEC. 9. Any person who shall violate the provisions of section 4, section 4a, section 4b, section 4c, section 4d, section 4e, section 4h, or section 4i of this Act, or who shall manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any board of trade, or who shall corner or attempt to corner any such commodity, or who shall fail to evidence any contract mentioned in section 4 of this Act by a record in writing as therein required, or who shall knowingly or carelessly deliver or cause to be delivered for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 11. No fine or imprisonment shall be imposed for any violation of this Act occurring before the first day of the second month following its passage.

SEC. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471, 473

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, Commissioners of the Illinois Commerce Commission, and DANIEL F. RICE & COMPANY, a Partnership,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

IRVIN ROOKS,
LEE A. FREEMAN,

Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership,

Petitioners.

February 12, 1947.

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 4204.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471, 473

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, Commissioners of the Illinois Commerce Commission, and DANIEL F. RICE & COMPANY, a Partnership,

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BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation,

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REPLY BRIEF OF PETITIONERS, DANIEL F. RICE & CO., A PARTNERSHIP

The respondent, the Board of Trade, in its brief filed with this Court, has not answered the arguments or position set out in our original brief. Our discussion there, we submit, is conclusive on the issues presented in this cause, and therefore we believe it unnecessary to reply in detail to the many inapplicable arguments made and issues raised in the

brief of the Board of Trade. The federal government, in its brief *amicus curiae,* has conceded its inability to urge at this time "that any conflict or interference or overlapping necessarily would result" from the Illinois Commission's supervision of rules of the Board of Trade relating to warehousing. (Govt. Br. 14)

The Board of Trade apparently is now urging that the Commodity Exchange Act relates to all phases of futures trading, and since proper warehousing and the use of warehouse receipts to satisfy delivery on futures contracts has an influence upon futures trading, therefore the Commodity Exchange Act also encompasses control over Board of Trade rules and regulations dealing with such warehouses. In so arguing, counsel have distorted the terms and intent of the Commodity Exchange Act, and have presented an illogical and erroneous argument. By the same token, adequate transportation and communication facilities are essential to the conduct of the futures market, yet no one would seriously urge that state regulation over telephone services, local railroad rates or local motor carrier service has been superseded by the Commodity Exchange Act. Counsel, in effect, however, have abandoned even this position by conceding that orders of the Illinois Commission which affect warehousemen would be controlling as against Board of Trade rules dealing with their qualifications for "regularity". They say (Resp. Br. 33):

> "Furthermore, any order validly entered by the Commission against the warehousemen will be valid and binding upon the warehousemen and the public notwithstanding any rules or regulations of the Board of Trade with respect to 'regularity.' If the Commission enters a valid order against the state elevators which disenables them from meeting the Board of Trade's conditions of regularity, such state elevators would automatically be disqualified from regularity."

In this brief, we merely wish to point out some of the substantial errors in statement that have been made by the Board of Trade.

1. Respondent urges that specific maximum warehouse storage charges are specified in its Regulation 1620, to insure substantial uniformity in the rates charged by federal and state houses, and should the state fix a storage rate different from that contained in Regulation 1620, the state warehouse would automatically become not regular. (Resp. Br. 6)

Regulation 1620 merely specifies that storage rates shall not exceed 1¼¢ per bushel for the first ten days, including elevation charges, and 1/20¢ per bushel for each additional day. (R. 155) The establishment of a maximum limit does not insure uniformity below that limit. The state might reduce rates below the limit indicated, and no violation of the regulation would occur. In fact, at present storage rates are 1/25¢ per bushel per day for each additional day after the first ten days, or approximately 20% below the maximum fixed. (R. 13)

2. Respondent argues that Rice "in this Court for the first time" urges that the Illinois Commission has an area of jurisdiction beyond what is covered by the Commodity Exchange Act by contending the Commission has authority to approve or disapprove rules relating to *private* warehouses. (Resp. Br. 7, 31-2, 34)

The complaint before the Illinois Commission specifically refers to rules and regulations of the Board of Trade relating to the "custody of grain in private warehouses", over which Commission jurisdiction was invoked. (R. 12-3, 18-9) Rice argued that question before the Illinois Commission, in the District Court and in the Circuit Court of Appeals.[1]

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[1]Rice brief before the Illinois Commission, p. 41; in the District Court, p. 30; in the Circuit Court of Appeals, pp. 31-2.

3. The argument is made that the Illinois Commission has "stretched the language of Section 194b to enable itself to veto ordinances of the Board of Trade which relate to the 'regularity' of warehouses * * *." (Resp. Br. 8)

The Illinois Commission has made no interpretation and has issued no opinion. It merely denied the Board of Trade's motion to dismiss, which motion claimed that the Illinois Commission had no authority whatever over Board of Trade rules relating to warehousing and custody of grain.

As a corollary to this argument, the Board of Trade argues (Resp. Br. 35):

> "By refusing to dismiss the Board of Trade the Commission indicates that it claims authority to issue directives based on its erroneous construction of Section 194b—a construction, however, which is binding on the federal judiciary."

We had been under the impression that the rule of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), provides that the construction of state statutes made by the court of last resort in a particular state will be considered binding on the federal judiciary. The Illinois Commission has not attained that exalted position.

4. Respondent states that Section 5(a) of the Commodity Exchange Act imposes a condition upon contract markets that there must be "sufficient warehousing facilities" to warrant the maintenance of futures trading. (Resp. Br. 10)

The section contains no such requirement.

5. The case of *Albers* v. *Lamson*, 380 Ill. 35, 42 N. E. (2d) 627 (1942), is cited as holding that the Commodity Exchange Act superseded any attempted state interference with the validity of futures contracts. (Resp. Br. 29)

No question of the supersedure of state law by the Commodity Exchange Act was involved. The only reference made to the Commodity Exchange Act was in connection with a discussion of whether or not futures trading violated the state public policy against gambling.

It is respectfully submitted that respondent has completely failed to demonstrate, by an analysis of the provisions and purpose of the Commodity Exchange Act, that the invoked state authority under Section 194b of the Illinois Grain Warehouse Act is in conflict with the federal statute, or involves a precise subject matter of regulation over which Congress has exercised its power. It is conceded even by respondent that the state commission has some power over the rules and regulations of the Board of Trade.

Respectfully submitted,

IRVIN ROOKS,
LEE A. FREEMAN,

Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership, Petitioners.

February 12, 1947.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471, 473

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, Commissioners of the Illinois Commerce Commission, and DANIEL F. RICE & COMPANY, a Partnership.

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION TO THE COURT OF CHANGES IN DESIGNATION OF PARTIES

IRVIN ROOKS,
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Attorneys for Daniel F. Rice, Joseph J. Rice, William F. Rowley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership;
Petitioners.

February 26, 1947.

LINCOLN PRINTING COMPANY, CHICAGO—WABASH 4004.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 471, 473

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE and VAL J. WASHINGTON, Commissioners of the Illinois Commerce Commission, and DANIEL F. RICE & COMPANY, a Partnership.

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION TO THE COURT OF CHANGES IN DESIGNATION OF PARTIES

Now come Irvin Rooks and Lee A. Freeman, attorneys for petitioners in the above entitled cause No. 471, now pending and undetermined in this court upon writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, and respectfully suggest to the court that one of the co-partners of the firm of Daniel F. Rice & Co., to-wit: Walter T. Rice, died on June 8, 1946, and that said firm has been reconstituted with the addition of Joseph

A. Fagan as a partner and member thereof, so that the proper designation of said petitioners in No. 471 is now:

> Daniel F. Rice, Joseph J. Rice, William F. Rowley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership.

It is further suggested that said change of designation be noted of record in further proceedings in the above entitled causes, such change, however, not to affect any of the questions or controversies presented by the record herein and said questions and controversies to stand for the decision of this court the same as if said change of designation had not been made.

Respectfully submitted,

Irvin Rooks

Irvin Rooks

Lee A. Freeman

Lee A. Freeman

Attorneys for Daniel F. Rice, Joseph J. Rice, William F. Rowley, and Joseph A. Fagan, doing business under the firm name of Daniel F. Rice & Co., a partnership.

February 26, 1947.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 473

ILLINOIS COMMERCE COMMISSION, et al., etc., et al.,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, a corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS ILLINOIS COMMERCE COMMISSION AND OTHER OFFICIALS OF THE STATE OF ILLINOIS.

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Assistant Attorney General,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946,

No. 473

ILLINOIS COMMERCE COMMISSION, et al., etc., et al.,

Petitioners.

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, a corporation,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF OF PETITIONERS ILLINOIS COMMERCE COMMISSION AND OTHER OFFICIALS OF THE STATE OF ILLINOIS.

Because the instant petitioners conceive the issues of the case of ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL. V. GREAT LAKES ELEVATOR CORPORATION, ET AL., No. 472, AND ILLINOIS COMMERCE COMMISSION, ET AL., ETC., ET AL. V. BOARD OF TRADE OF THE CITY OF CHICAGO, No. 473, to be so intimately related as to be not susceptible of separate consideration, this single reply brief is filed in both cases.

ARGUMENT.

I.

The questions moqted in these cases are not definitive issues but are abstract and general questions as to the boundaries between state and federal authority over warehouses. Therefore they are not properly susceptible of decision and the cases should be dismissed.

Respondents' briefs make it clear that, as Illinois intimated in her brief in support of her petition for *certiorari,* the plaintiffs do not seek this court's decision upon the validity of any specific or particular regulation or other action of the Illinois Commission. Rather do they importune it to define in abstract and general terms the limits between state and federal power over the vast, intricate and vital business of storing the nation's grain.

A granary, whether or not it is licensed under the Federal Warehousing Act, must comply with many laws of nature if it is to serve the public adequately. It must be proof against thieves and vandals, against rodents, against bacteria, against fire, against extremes of heat and cold, and, especially where it stands upon a wharf, against water seepage. And public policy, whether state or federal, may concern itself with the safety of employees, customers and the public generally. Therefore, the myriad phases and ramifications of the business are by their inherent nature subject in diverse and manifold aspects, to national, state and local regulation.

In addition, so highly sophisticated and integrated an economy as that of our modern industrial and commercial society requires that the warehouseman's receipts, which

are commercial specialties evidencing ownership of the nation's foodstuffs, assure that they will be honored according to their tenor. Among the many important aspects of the grain warehouse business that are and must be subject to regulation either by state or federal authority are rates, physical facilities, financing both by the public and by transactions among affiliates, segregation and commingling of fungible grains, trading on the part of a warehouseman in grain stored in his own warehouse, the location of elevators both in respect to their proximity to water and rail routes and with respect to zoning programs, negotiability and other contractual implications of warehouse receipts, inspection of grains with respect to fitness for consumption and for the purposes of grading, and the liability of warehousemen as bailee or despositary of grains.

From the single phrase in the Federal Warehouse Act (Title 7, U.S.C.A. Secs. 1, *et seq*) providing that the Secretary of Agriculture's power, authority and jurisdiction "shall be exclusive with respect to all persons obtaining a license hereunder," respondents seek to obtain a declaration generally and categorically interdicting all regulation of federally licensed warehousemen by the Illinois Commerce Commission.

Respondents do not contend that federally licensed warehouses are exempt from all state surveillance in respect to such aspects of the business as affect the safety and security of grain stored (respondents concede that fire and health laws may be applied to federally licensed warehouses) nor to regulation of financing in general (respondents do not challenge the validity of Illinois blue sky and other security acts as applied to federally licensed warehouses), nor to many other regulations that embody exertions of Illinois' police power. But if Illinois may exert her police power with respect to public health and safety as against

federally licensed warehouses at all, presumably she may exert that power as well through the mediacy of her Commerce Commission as through the instrumentality of her board of health, her state constabulary and city police departments or other agencies. Although there might well come a point at which federal approbation of a warehouse as proof against deterioration or corruption of its grain, if such approval were direct and specific, might inhibit state inspection, or a point at which federal authority might conflict with and therefore supersede inconsistent state regulation in respect to any one of the other many phases of the warehouse business, this court, we submit, cannot mark and should not attempt to mark such points in this case.

With respect to financing and securities, it is not suggested that Illinois' blue sky laws are rendered impotent to inhibit an issue of stock or bonds to the public generally, even though such stock and bonds represented investment in or ownership of a federally licensed warehouse. Certainly, Illinois' power over her banks would prevent their lending the public's deposited money improvidently, even though the would-be borrower were a federally licensed warehouse.

But respondents say that *in no instance* may Illinois *through her Commerce Commission* regulate *or even scrutinize with a view to regulation* financial transactions equally important to the warehouseman's financial stability and the public's stake in the warehouse if the transactions in question occur between parent and subsidiary or other affiliated corporations.

These reflections show very plainly that what the plaintiff really seek is the vindication of abstract principles of immunity and not the invalidation of any specific or parti-

cular act of Illinois' sovereignty with respect to federally licensed warehouses or the Chicago Board of Trade.

The court is not asked to interdict all state regulation of federally licensed warehouses. And any line by which the court might now undertake to partition the domain of regulatory power between state and nation would have to be a line so broad as to be really not a line at all but no more than a general and therefore a vague indication of the bourne between state and federal authority. It is for this reason, and not merely to preserve the amenities of state and federal comity, that Illinois insists that the present case conceives no definitive issues and is therefore quite premature.

If the considerations above developed are well entertained, it follows that this court should not assume that Illinois will act in derogation of federal authority in respect of matters as to which Illinois has, by respondents' own concession, a very considerable measure of residual sovereignty, notwithstanding the acts in question. If the court accedes to the conclusions suggested under this Point, it will be unnecessary to undertake the task which the plaintiffs' suits seek to visit upon the federal judiciary. The cases may and we think should be dismissed and the respondents remitted to appropriate remedies if future acts of Illinois infringe any immunity conferred by the federal laws in question.

II.

The Johnson Act Is Applicable.

Under the Johnson Act (28 U. S. C. A. Sec. 41 (1)) access to the federal courts is forbidden where it is sought to impeach state regulation that affects rates, does not involve interstate commerce, and is susceptible to attack by plain, speedy and adequate remedy in the state courts.

Respondents say that rates are not involved, presumably because they have not been established. But rates have not been established simply because of the pendency of the instant federal judicial proceedings. It would be an anomaly indeed if plaintiffs might sue to enjoin the fixing of rates, *thereby in effect seeking protection of present rates*, and then say that rates are not involved because the proceedings instituted by the plaintiffs have prevented their change.

Respondents concede (or at least do not and cannot challenge) the proposition that the state courts would be open to them. (See Commission's brief in support of petition for *certiorari*, pp. 13-14, citing *Peoples Gas Co.* v. *Slattery*, 373 Ill. 31, and *Sprague, et al.* v. *Biggs*, 390 Ill. 537.)

The only question remaining, then, is whether "interstate commerce" is "involved." That the business of grain warehouseing affects interstate commerce is not challenged. But nearly all modern industry and *all* modern public utility operations "affect" interstate commerce. If the Johnson Act is not applicable wherever interstate commerce is "affected," the statute is a practical nullity.

That the business, the activities of which are purely local, as manufacture is local even when the product is destined for interstate commerce, does not "involve" interstate commerce clearly appears from *Munn* v. *Illinois*, 94 U.S. 113. In that case, as the court knows, it was sought to invalidate Illinois regulation fixing grain warehousemen's tariffs on the ground, among others, that the business so far constituted or involved interstate commerce as to be beyond the purview of state regulation. It must be remembered that at the time of *Munn* v. *Illinois*, this court adhered sedulously to the doctrine that where interstate commerce was involved, congressional silence with respect to interstate commerce meant that state legislation was inter-

dicted. Yet this court, though recognizing the interstate implications of the business, held that the business did not so far directly constitute or involve interstate commerce as to forbid the exercise of state legislative authority. If this is so, then certainly interstate commerce is not involved.

III.

Neither present federal regulation of warehouses and of boards of trade nor potential (not actual) conflict between such regulation and state regulation ousts the Illinois Commission of jurisdiction.

All of the participants in the present litigation, including all *amici curiae*, concede that congressional intent, expressed or clearly evinced, is the touchstone of this case.

Let us then undertake to visualize the practical operation of the legislation in question, *first*, as conceived by respondents, and, *second*, as conceived by petitioners.

The Intent of Congress and the Operation of the Act As Conceived by Respondents.

According to respondents, Congress, recognizing that the business of storing grain is quite as vital to the very lives of American citizens as is its transportation, undertook to pre-empt the regulation of this business from the states and to substitute comprehensive regulation for state control. How did Congress, according to respondents, go about the important task that it assumed?

First, it plainly provided that no warehouseman need submit himself to the authority of Congress and the Department of Agriculture at all unless he wished to. But if he did elect to substitute national for state authority over himself, he subjected himself to no comprehensive or in-

tegrated rate making process, submitted to no requirement at all in respect to his charges except that they be not exorbitant, obtained no right to judicial review of any rate that he might charge,* escapes state surveillance but does not submit himself to federal superintendence with respect to transactions among affiliated interests, exempts himself from all state regulation but incurs no penalty for violation of federal regulation at any time that he chooses to abandon his license and return to state superintendence and, in short, *finds a zone of sanctuary where neither state nor federal authority can touch him.*

It is very doubtful whether the act, *as thus construed,* is constitutional. Certainly, no such authority over rates as that given to the Department of Agriculture, which is merely authority to approve the rate of each warehouseman individually, could stand as constitutional if in fact it is a rate making power at all.

The Act as Construed by Petitioners.

We believe that we have demonstrated above that the act *as construed by respondents* is so arrantly unreasonable a means of accomplishing the (supposed and alleged) plenary regulation of the warehouse business that it is probably unconstitutional.

But if the act is understood *not* as an exercise of national sovereignty in pre-emption of the field of state regulation, but merely as a means of enabling those warehousemen who

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* In the Rice brief it is conclusively demonstrated, contrary to the contentions of respondents, that the federal administrative review act was not even passed until thirty years after the adoption of the Federal Warehouse Act, and, moveover, that that act applies only to federal administrative procedures where the act authorizing such procedures affords and requires notice, hearing on evidence, findings, and the like.

so elect to obtain federal credentials for their warehouse receipts, the act immediately becomes understandable, reasonable and eminently sensible.

As we read the act, it means that if a warehouseman desires the prestige, accreditation and sanction of federal approbation of his business, he may submit his business, including his rates of charge, mode of storage and the text and import of the receipts which he issues, to federal supervision. Such voluntary submission to federal authority may and doubtless will give him a competitive advantage over those who do not choose to seek the hallmark of federal approval upon their business. But such advantage is entirely legitimate. His competitors can either obtain a like advantage or have not earned the *signum* of approval implied by federal licensure.

In short, if the act is conceived not as an attempt to pre-exempt without supplanting state legislation, but merely as part of a national policy such as that implict in a federal Bureau of Standards, the act immediately becomes a congressional measure distinguished by its common sense.

Now we say that this is true notwithstanding that the authority of the Secretary of Agriculture shall be "exclusive." *For the Secretary has no authority except the limited authority envisioned by the construction for which we contend.* With respect to those particular matters in which he may act, including, perchance, the disapproval of state action when such action is actually in conflict with the federal act or regulations adopted under it, his authority will be supreme.

Mindful that this court will have already perused hundreds of pages of briefs by the time that it reaches this one, we are anxious to keep the tenor of the instant presentation that of a reply rather than repetition of arguments

already made. We do, however, suggest, even though the suggestion is in some measure repetitive, that *Cloverleaf Butter Co.* v. *Patterson,* 315 U.S. 148, which the Circuit Court of Appeals said

"On its facts * * * is most similar to the instant one", is not nearly as incisive in its parallel as is *Terminal Ass'n.* v. *Brotherhood of Railway Trainmen,* 318 U.S. 1, where a regulation of the Illinois Commerce Commission commanding petitioner railroad to run cabooses on interstate trains was sustained, although this court recognized that the regulation might conflict with contrary regulation by the Interstate Commerce Commission and although the court also observe that the safety of employees, the protection of the public, and all other public interests sought to be served by the state regulation in question had been the subject matter of direct congressional action.

Respondents find some anomaly in the fact that the Illinois Commission may prescribe a rate which the Secretary of Agriculture may disapprove. The same thing has long been true in the field of railroad rates. Under section 13 of the Transportation Act of 1920, the Interstate Commerce Commission may at any time disapprove and invalidate a rate fixed by a state commission—let us say, for example, a rate for the transportation of grain from one warehouse to another. How, then, can there be any incongruity or solecism in a conception of an intent of Congress that would make rates fixed generally by state administrative process effective until such time as they were disapproved by federal action? We may note, in passing, too, that the Interstate Commerce Commission is authorized to and does "cooperate" with state commissions in the matter of fixing rates for intrastate commerce where interstate commerce will be affected.

IV.

The Commodities Exchange Act does not exempt the Board of Trade from investigation or the incidental regulatory process contemplated by the Commission.

In view of the position taken by the Solicitor General of the United States, we feel that little need be said in specific reply to the arguments on behalf of the Board of Trade.

If we are correct in our construction of the Federal Warehouse Act, the Illinois Commission has authority to investigate and to regulate, to an extent that cannot be measured *ex hypothesi* in the instant case, federally licensed warehouses. Even if this court should sustain the Circuit Court of Appeals in its view that *federally licensed* warehousemen are exempt from the Illinois Commission's authority, Illinois' authority would still be plenary with respect to warehousemen who have *obtained no federal license*. It would seem too plain for argument that if the Commission's regulations (whether in respect to all warehousemen or with respect to only those not federally licensed) are to prescribe the kind of warehouses in which is stored the grain in which trading occurs on the floor of the exchange, the Board of Trade will necessarily be affected. Therefore, far from the Board's being prejudiced, its constitutional rights are scrupulously preserved by permitting it to appear, cross examine witnesses, and introduce its own proof in any hearing which must necessarily affect it.

Usually, when legitimate regulation is contemplated (no one questions Illinois' authority over non-licensed warehouses), the complaint is made that third parties who are vitally affected by the regulation were *not* given an oppor-

tunity to be heard. We find it strange in the extreme that inasmuch as regulation is imminent, at least with respect to non-licensed warehouses, and inasmuch as such regulation must substantially affect the business transacted on the Chicago Board of Trade, the Board should complain that it is given an opportunity to participate in the proceedings contemplating such regulation.

In any event, considerations similar to those developed with respect to the warehousemen are appropriate in the case of the Board of Trade. Surely, there is no warrant for the position that merely because the Board of Trade is federally recognized as a "commodity exchange" its activities with respect to warehousemen (who are not commodity exchanges and many of whom have no federal licenses) are immune from state regulation.

Conclusion.

We respectfully submit that the judgment of the Circuit Court of Appeals should be reversed.

We think that the judgment should be reversed without decision of the inherently nebulous questions of state *versus* federal control that petitioners seek to propound abstractly and in the absence of specific state action.

But if this court finds justiciable controversy upon the present records, then we think that neither the Federal Warehouse Act nor the Commodity Exchange Act should be held to supersede the authority of the Illinois Commerce Commission in the premises.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 471

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
A CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER OF BOARD OF TRADE OF THE CITY OF CHICAGO, RESPONDENT.

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OPINIONS BELOW.

The opinion of the District Court (Tr. 220) is not reported. The opinion of the Circuit Court of Appeals (Tr. 242) is reported in 156 F. (2d) 33.

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*We shall refer to Petitioners Illinois Commerce Commission, et al., No. 471 as "Commission," and Petitioners Daniel F. Rice & Co., *et al.*, No. 473 as "Rice," and this respondent files identical answers in No. 471 and 473.

STATEMENT.

The respondent, Board of Trade of the City of Chicago, is a corporation by legislative act of the Illinois State Legislature approved February 18, 1859 (Tr. 28-30). Its activities affect the flow of grain in interstate commerce, and the Congress of the United States has exercised its authority to regulate its activities by legislation commonly known as the Futures Trading Act (An Act of August 24, 1921, c. 86, 42 U. S. Stat. 187), the Grain Futures Act (Act of September 21, 1922, c. 369, 42 U. S. Stat. 998), and lastly the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a), and it operates as a board of trade through its designation as a contract market by the Secretary of Agriculture by virtue of his authority under the Commodity Exchange Act (Tr. 3).

It appears from paragraph 15 of the Complaint filed with the Illinois Commerce Commission (Tr. 17) that the Commission is asked to assume jurisdiction of the rules and regulations of the Board of Trade "*covering its maintenance as a commercial grain exchange,*" and (under the prayer for relief, Tr. 19) to declare inoperative and void such rules and regulations which have not received the prior approval of the Illinois Commerce Commission and to require the Board of Trade "*to adopt and submit for approval,* rules and regulations which are fair, equitable, adequate and specific" as determined by the Illinois Commerce Commission. As we have alleged (Tr. 3), the Board of Trade exists as a commercial grain exchange only by virtue of its designation as a contract market by the United

States Secretary of Agriculture under the authority of the Commodity Exchange Act. It cannot exist otherwise. No state statute may authorize its maintenance.

The interference of the Illinois Commerce Commission sought in Daniel F. Rice & Company's complaint, will not only cause the State to assume control of the Board in its "maintenance as a commercial grain exchange," but will subject it to penalties for failure to comply with orders of the Illinois Commerce Commission, and will require large expenditures of funds in resisting action by the Commission, unless restrained by the Federal Court.

Statements by the Attorney General that the proceedings before the Illinois Commerce Commission, "being merely investigatory, they do not interfere with interstate commerce" are without foundation (Com. Pet., pp. 12-13). Even the statement of the case in the same brief (p. 9) negatives any such conclusion, for it is there said that the petition "prayed an investigation in the premises and the entry of orders * * *."

Petitioners have in no way pointed out any fallacy, misstatement or error in the statement of the Circuit Court of Appeals that is the basis of its decision (Tr. 261), 156 F. (2d) 33 (44):

> "It is plain, so we think, that any rule or regulation promulgated by the Board of Trade relative to its transactions in warehouse receipts must conform to and be consistent with the requirements of the federal authority in connection therewith. Any rule or regulation in conflict with or in excess of such authority would be invalid, and this would be so whether or not it was approved by the Illinois Commission. It is equally plain that any rule or regulation promulgated by the Commission concerning the same subject matter, which conflicted with or exceeded the power vested in the federal authority, would be of no effect. We therefore are of the view that Congress has invaded

> the precise field occupied by the Illinois Commission by reason of § 194 (b) of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The Commission states (p. 7) that the case is of first impression and "nevertheless the decisions of the Circuit Court of Appeals are probably in conflict with the teachings of this court's decisions most nearly in point," and in the Rice petition it is said (p. 5): "This is a case of first impression. No court has previously passed upon the validity of state regulation of rules of boards of trade in the face of claimed repugnance to the Commodity Exchange Act."

Board of Trade v. *Olsen*, 262 U. S. 1, *Board of Trade* v. *Wallace*, 67 F. (2d) 402 (certiorari denied by this court), and the opinion of this court in *Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S. 236, show that the very nature of the functions of the Board of Trade precludes any real probability of conflict between the decision of the Circuit Court of Appeals in this case and decisions of this court.

The rules of the Board of Trade which Rice refers to (p. 5) as establishing warehousing standards and practices do no such thing: they only relate to the "regularity"* of those warehouses from which grain may be delivered on futures contracts. They relate entirely to regularity for the purpose of delivery on futures contracts. Under Sec. 5a (7) of the Commodity Exchange Act, the warehouse receipts of a federally licensed warehouse must be accepted in satisfaction of futures contracts if the ware-

* Rule 281. * * * deliveries shall be made by the delivery of registered warehouse receipts issued by warehouses which have been declared regular by the Board. The Board by regulation may prescribe the conditions upon which warehouses may be declared regular, and also conditions upon which warehouse receipts issued by regular warehouses shall be deliverable (Tr. 96).

house meets with reasonable requirements as to location, accessibility and suitability. This is recognized by Regulation 1829 of the Board of Trade (Tr. 180-181). Rice wants the Illinois Commerce Commission to order the Board of Trade to place conditions upon the use of receipts of Federal warehouses to satisfy futures contracts.

ARGUMENT.

I.

The District Court Had Jurisdiction Because (1) the Right to Relief Depends on the Construction or Application of an Act of Congress; and (2) the Case Arises Under a Federal Law Regulating Interstate Commerce; and (3) the Commodity Exchange Act Is a Valid Exercise of the Power of Congress Over Interstate Commerce.

(1) The District Court had jurisdiction since the right to relief depends on the construction or application of an act of Congress (subdivision 1a, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (1) (a)).

The pleading adequately discloses a present controversy dependent for its outcome upon the construction of a federal statute. *Peyton* v. *Railway Express Agency, Inc.*, 316 U. S. 350, 353, and cases cited therein.

(2) The District Court had jurisdiction since the suit arose under a law regulating interstate commerce (subdivision 8, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (8)).

The Judicial Code conferred jurisdiction upon the District Court. *Mulford* v. *Smith*, 307 U. S. 38, 46.

(3) The Commodity Exchange Act is a valid exercise of the power of Congress over interstate commerce.

In *Board of Trade* v. *Olsen, United States Attorney*, 262 U. S. 1, in holding that the Grain Futures Act was not unconstitutional, said (33-36):

> "The Chicago Board of Trade is the greatest grain market in the world. *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 235. • • •

"It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in *Stafford* v. *Wallace*, 258 U. S. 495.

* * * * * *

"The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe, as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East.

* * * * * *

The Court further said (40):

"In view of the actual interstate dealings in cash sales of grain on the exchange, and the effect of the conduct of the sales of futures upon interstate commerce, we find no difficulty under *Munn* v. *Illinois*, 94 U. S. 113, 133, and *Stafford* v. *Wallace*, *supra*, in concluding that the *Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such.*"

In a late case in Illinois, *Albers* v. *Lamson*, 380 Ill. 35, the court referred to *Miller* v. *Sincere*, 273 Ill. 194, and then said (41-42):

"After this decision the Congress of the United States found it appropriate to further define national public policy in that field of interstate commerce wherein the Federal government is supreme. In 1934 a comprehensive act was passed known as 'Securities Exchange Act of 1934.' (U. S. C. A. Tit. 15, 78a, *et seq.*) This act followed the Securities act of 1933. (U. S. C. A. Tit. 15 77a, *et seq.*) There was also enacted by Congress the Commodity Exchange act. (U. S. C. A. Tit. 7, sec. 1, *et seq.*) * * * *That the Securities and Exchange Commissions, the boards of trade and other similar instrumentalities are engaged in interstate commerce is not a debatable question.*" (Italics ours.)

It thus appears that the Illinois Supreme Court, as well as this Court, has recognized the Commodity Exchange Act as legislation regarding instrumentalities engaged in interstate commerce.

II.

The Johnson Act Amendment of 1934 Is Not Applicable to This Case.

The Johnson Act Amendment (§ 24 (1) of the Judicial Code; 28 U. S. C. A. § 41 (1)) has no application to this case because:

(a) *It is not claimed that the assumption of jurisdiction by the Commission is repugnant to the Constitution of the United States, and it is not based on Diversity of Citizenship.*

Respondent does not contend that the stat statute is unconstitutional. We contend that the state statute as interpreted and applied by the Commission conflicts with the Commodity Exchange Act.

In *Ex parte Bransford*, 310 U. S. 354, this Court said (358-359):

> "The declaration of the supremacy clause gives superiority to valid federal acts over conflicting state statutes but this superiority for present purposes involves merely the construction of an act of Congress, not the constitutionality of the state enactment."

Again, in the case of *Ex parte Buder*, 271 U. S. 461 (1926) this Court said (466-467):

> *"The claim that the tax is void rests, not upon a contention that the state statute under which it was laid is unconstitutional, but upon a contention that the statute is no longer in force."*

See, also, *Cloverleaf Butter Co. v. Patterson*, 116 F. (2d) 227; 315 U. S. 148.

Because of the foregoing, we believe the Johnson Act has no application. Counsel claim in effect that the Johnson Act has application, even without diversity of citizenship or repugnance of the order to the Constitution, where the order involved "(3) has been made after reasonable notice and hearing and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state."

(b) *It was not necessary for the Board of Trade to exhaust state remedies, either by petition for rehearing or by appeals or writs of error through all of the courts of Illinois.*

It was argued in the trial in the Circuit Court of Appeals under this point that the respondent should have applied to the Commission for a rehearing. It is intimated that no Federal injunction could be obtained until the Board of Trade had sought review of the Commission order in the Supreme Court of Illinois.

(1) No petition for rehearing was necessary.

The motion before the Commission was to dismiss on the ground that the Commission was without jurisdiction of the subject matter.

The order on the motion (Tr. 6 of our Complaint) notified the Board of Trade that its motion was denied and added: "You are hereby further notified that the Commission has set the above case for hearing at the office of the Commission * * * on October 24, 1944."

No opinion was furnished. What would constitute a Petition for Rehearing? Nothing more than to refile the briefs and re-argue the case. Certainly the order of the Commission in the manner it was entered showed no findings that would serve as a basis for an application for a rehearing.

Although Section 71 of the Public Utility Act, referred to in the Commission's brief (p. 13), provides for an application for rehearing within thirty days after the service of an order and the Commission has twenty days thereafter to grant or deny the application, the order was entered on October 24th. Surely the Commission did not propose to entertain or expect any Petition for Rehearing, when such petition would not have been due until after the date the cause had been set for trial.

In *Prendergast* v. *New York Telephone Company*, 262 U. S. 43, in which the court held that a petition for rehearing before the Commission before appealing to the Federal Court was unnecessary, it was said (49):

> "Here the Commission did not suggest in its answer that it perceived any ground upon which it would have granted a rehearing, if an application had been made, but, on the contrary, maintained the correctness of its orders in all respects. Manifestly under such circumstances the injunction should not have been denied merely because application had not been made to the Commission for a rehearing."

The same reasoning applies here on three grounds: (1) the answer of the Commission in this suit does not suggest in any respect that the Attorney General perceived any ground upon which the Commission would have granted a rehearing; and (2) the order denying the Board of Trade's motion to be dismissed because the Commission lacked jurisdiction stated no grounds whatsoever for the order and surely gave no indication that if an application had been made the Commission would have given it any consideration; (3) *the Commission set the case for trial fourteen days after the order and thus did not allow the requisite thirty days for filing the petition for rehearing.* The order did not comply with the statute (Section 65 of the Public Utilities Act) which provides:

"At the conclusion of such hearing the commission

> shall make and render findings concerning the subject-matter and facts inquired into and entered its order based thereon."

The order appealed from simply denied the Board of Trade's motion. No opportunity for a petition for rehearing was allowed by the Commission; its order was in such form that no reason for such petition appeared.

In a decision handed down November 5, 1945, *Levers* v. *Anderson*, 326 U. S. 219, 222, this Court has followed its ruling in *U. S.* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274 and *Prendergast* v. *New York Telephone Company*, 262 U. S. 43.

The case of *Natural Gas Company* v. *Slattery*, 302 U. S. 300, mainly relied upon by the Commission (p. 20) is not in point. In the *Slattery* case the Commission ordered a non-party, Natural Gas Company, to produce its books and records. The Gas Company, without ever appearing before the Commission to resist the scope of the order, sought an injunction in the Federal court, contending that the order would require it to expend large sums of money in preparing the information. The Supreme Court treated the order to produce as if it were a subpoena and pointed out that all citizens are required to appear and give evidence. The Supreme Court then said it would not enjoin the scope of the order because Natural Gas had never brought to the attention of the Commission its contentions that the order was too broad. The conclusion of the *Slattery* case supports our position and is as follows (311):

> "The extent to which a federal court may rightly relax the rule *where the order of the administrative body is assailed in its entirety, rests in the sound discretion which guides exercise of equity jurisdiction. Hollis* v. *Kutz, supra; United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 282; cf. *United States* v. *Sing Tuck, supra.* But there are cogent reasons for requiring resort in the first instance to the ad-

> ministrative tribunal when the particular method by which it has chosen to exercise authority, a matter peculiarly within its competence, is also under attack, for there is the possibility of removal of these issues from the case by modification of its order. Here the commission had authority to pass upon every question raised by the appellant and was able to modify the order. In such circumstances the trial court is free to withhold its aid entirely until administrative remedies have been exhausted." (Italics ours.)

The *Slattery* case does not represent a denial of federal relief because a rehearing was not applied for. It is a case of denial of federal relief because the non-party, Natural Gas Company, had never presented its contentions to the Commission at all. Naturally, it was held that the Federal courts would not consider contentions that had never been made before the Commission at all.

But when the Commission has heard evidence and has decided the matter, the Federal courts will not deny relief merely because the complaining party has not elected to avail himself before the administrative tribunal of a purely permissive right to petition there for rehearing.

Counsel infer (p. 14 Commission's brief) that the suit was to enjoin an order of administrative board or commission of a state which affects rights chargeable by a public utility and that interstate commerce was not involved. We have already pointed out that interstate commerce was involved. We also point out that it is not claimed that the order of the Commission affects rights chargeable by a public utility. The Board of Trade is a grain market "engaged in a business affected with a public national interest and is subject to national regulation as such" (and is not a public utility under the laws of Illinois); nor are the service or other charges of the Board of Trade involved, and the Board does not own or operate any warehouses.

Counsel repeatedly states that all that was sought before the Illinois Commerce Commission was "a mere investigation." The prayer for relief in the complaint filed before the Commission (Tr. 18-19) conclusively contradicts such assertion.

(2) Appeals and writs of error through the state courts were unnecessary.

The Board of Trade did not have to pursue its rights all through the state courts, as appears from the language in *Lane* v. *Wilson*, 307 U. S. 268, the court saying (274-275):

> "The other preliminary objection to the maintenance of this action is likewise untenable. To vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the state courts. Normally, the state legislative process, sometimes exercised through administrative powers conferred on state courts, must be completed before resort to the Federal courts can be had. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. But the state procedure open for one in the plaintiff's situation (§ 5654) has all the indicia of a conventional judicial proceeding and does not confer upon the Oklahoma courts any of the discretionary or initiatory functions that are characteristic of administrative agencies. See Section 1 of Article IV of the Oklahoma Constitution; *Oklahoma Cotton Ginners' Assn.* v. *State*, 174 Okla. 243; 51 P. 2d 327. Barring only exceptional circumstances, see *e. g. Gilchrist* v. *Interborough Rapid Transit Co.*, 279 U. S. 159, or explicit statutory requirements, *e. g.* 48 Stat. 775; 50 Stat. 738; 28 U. S. C. § 41 (1), resort to a Federal court may be had without first exhausting the judicial remedies of state courts. *Bacon* v. *Rutland R. Co.*, 232 U. S. 134; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U. S. 196."

III.

When Congress Assumed Complete Regulatory and Supervisory Means of Control Over Boards of Trade, State Regulation Was Superseded and Excluded.

As said in *Pennsylvania Railroad Company* v. *Public Service Commission*, 250 U. S. 566 (569):

> "* * * when the United States has exercised its exclusive power over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them. *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446; *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604; *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147."

Again, in *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, the Supreme Court in 1941 said (155-156):

> "Exclusive federal regulation may arise, also, from the exercise of the power of Congress over interstate commerce where, in the absence of Congressional action, the states may themselves legislate. It has long been recognized that, in those fields of commerce where national uniformity is not essential, either the state or federal government may act. *Willson* v. *Black-bird Creek Marsh Co.*, 2 Pet. 245; *California* v. *Thompson*, 313 U. S. 109, 114. Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation. *But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application.*"

See, also, *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 605, *Hill et al.* v. *Florida*, 65 S. Ct. 1373 and *Southern Pacific Company* v. *Arizona*, 65 S. Ct. 1515.

IV.

The Commodity Exchange Act Exclusively Occupies the Field of Regulation of the Board of Trade and the Illinois Commerce Commission Is Without Power to Attempt to Regulate the Board of Trade.

It is urged by counsel that the Commodity Exchange Act is not comprehensive in scope and that the federal statute seeks only to control excessive speculation and manipulation in commodity exchanges.

The Appendix of Commission's brief (p. 75) contains only a few sections of the Commodity Exchange Act, which are referred to as "sections dealing with boards of trade." The entire Act must be followed by the Board of Trade and its members. This Court cannot construe the Act by reference only to a few sections referred to by counsel. As said in *Savage* v. *Jones*, 225 U. S. 501, 533:

> "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."

The Act does not seek only to control excessive speculation and manipulation in commodity exchanges and with respect to futures only. It is said in House Report No. 421 on H. R. 6772 in the President's message to Congress in 1934 accompanying the Commodity Exchange Bill:

> "The fundamental purpose of the measure is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over

> those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves. *The bill has as another objective the restoration of the primary function of the exchanges which is to furnish a market for the commodities themselves.*" (Italics ours.)

Section 5a (7) of the Act provides that each contract market shall require that receipts issued under the United States Warehouse Act shall be accepted in satisfaction of any futures contract "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law." To enforce this, Regulation 1829 was passed (Tr. 180-181).

Section 5a (6) provides that each contract market shall require that all contracts of sale of any commodity for future delivery shall provide for the delivery of commodities of grades conforming to United States standards. Rule 295 (Tr. 68) was passed to comply with this section.

Section 5 (d) provides that the Secretary of Agriculture is authorized to designate any board as a contract market "when the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board." This does not refer to futures alone and was a prerequisite of the board being designated a contract market. It is covered by Rules 82 (Tr. 46) and 150 (Tr. 61) and other rules. Moreover, the entire Commodity Exchange Act is a part of the rules of the Board of Trade. Rule 603 (Tr. 118) and Regulation 1828 (Tr. 180).

It seems absurd to say, as urged by counsel, that the Act does not provide for affirmative regulation, for if the rules do not comply with the Commodity Exchange Act, the Secretary of Agriculture, under Section 5b, shall have cause for suspending the Board of Trade as a contract market.

Counsel say (p. 26) that the limited and circumscribed character of the Commodity Exchange Act and the underlying congressional intent were authoritatively discussed in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188. That case was with respect to the Grain Futures Act, but nevertheless the case does not support counsel's contention when examined. That case did not concern a contract made on the Board between its members, but a contract between members and non-member customers. In *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188, it was pointed out (193):

> "There is no suggestion that these contracts violated the law of the place where the exchange was situated. It may be assumed that they were valid as between the Uhlmann Grain Company and its fellow members of the exchanges."

It was then pointed out that there were two distinct agreements, and while the agreement between the principals on the exchange was legal and proper, that between the customer and one of the principals might be void under Missouri law. The court said further (194):

> "If, as Dickson contends, and the trial court found, Dickson's agreement did not contemplate the execution of transactions on the exchange in his behalf, clearly the defense of illegality is governed by the law of Missouri, unless that law has been superseded by The Grain Futures Act."

The Missouri Act applied not to the futures trading on the exchange, but to an agreement existing separate from the transaction occurring on the exchange.

Likewise, it is said in the *Dickson* case (199):

> "The Missouri law is in no way inconsistent with the provisions of the federal act. It does not purport to legalize transactions which the federal act has made illegal. *It does not prescribe regulations for exchanges.*"

State v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621, (cited Commission's brief, p. 27) is not applicable, for in that case it is specifically stated (630):

> "The transactions here occurred in Sedalia, which was not a designated contract market. It was not a place permitted by the Grain Futures Act, nor was it a place forbidden by that act. The conduct of such a place was not covered by any of the terms of the act. It was wholly within the jurisdiction of the state to prevent the maintenance of such a place."

The statute is comprehensive in scope and it does provide affirmative regulation, as an examination of it will show. Under the Act on numerous occasions the Board has been required to pass rules and regulations. See, for instance, Regulations 1829 and 1832 (Tr. 180-181).

As to Section 12 and the provision that "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *," the context of the quotation from *United Brokerage Co.* v. *Jensen*, 322 U. S. 202, 209, shows that the phrase lacked application to the situation in this case. Here the Board of Trade of the city could not operate as a contract market except by and under the Commodity Exchange Act, but nevertheless the State of Illinois attempted to exercise jurisdiction over the Board of Trade by requiring it to pass rules governing its operation as a contract market as ordered by the Illinois Commerce Commission.

Counsel state (p. 29) that:

> "The Commodity Exchange Act does not require any rule or regulation of the Board of Trade to be submitted to the Secretary of Agriculture for his approval."

But in *Board of Trade of the City of Chicago* v. *Wallace*, 67 F. (2d) 402, the Board of Trade's designation as a contract market had been ordered suspended for sixty days by the Commission authorized under the Grain Futures

Act because of rules it then had in effect. Under Section 4a (1) of the Act the board has to pass rules making effective the limits set by the Secretary of Agriculture on the amount of trading, such as Regulation 1832, etc. Moreover, the Board of Trade is prohibited by Section 5a(6) from making any rule permitting deliveries of commodities at grades other than conforming to the United States standard, and in 5a(7) from passing any rule prohibiting the acceptance in satisfaction of futures contracts of receipts of federally licensed warehouses (even "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any state").

Sections 4b and 4c of the Commodity Exchange Act declare it unlawful for any member of a contract market to use the market to cheat or defraud, etc., and Section 4c prohibits a wash sale, cross trade, fictitious sale, *et al.*, and the conclusion of clause (c) is: "Nothing in this section or section 4b shall be construed to impair any state law applicable to any transaction enumerated or described in such sections." These two sections emphasize that Congress has taken complete control of the contract market. They only permit the application of state law to any of the above transactions, so that a violator of those sections may be prosecuted under state law if applicable, as well as subject to the penalties of the Commodity Exchange Act if the above sections are violated.

The prohibition of state action in other respects is to be inferred when Congress states when state action may take place.*

As this answer is about to be filed, we were served with

*"It is well settled that an exception in a statute • • • excludes all other exceptions." 25 R. C. L. 983. "Provisos are construed as affecting the paragraph to which they are annexed." *Spring* v. *Olney*, 78 Ill. 101, 105; *Bass* v. *B. & O. T. R. Co.*, 142 F. (2d) 776, 778. "No further exceptions may be read into the act." *People* v. *Deep Rock Oil Co.*, 343 Ill. 388, 401.

a brief filed on behalf of the National Association of Railroad and Utilities Commissioners as *amicus curiae* in support of the petition for writ of certiorari. We note that John D. Biggs, one of the petitioners, and Chairman of the Illinois Commerce Commission, is also President of that Association. We note in this petition that the second quotation on page 29 from *Board of Trade* v. *Olsen* is so garbled as to be a misstatement of the actual quotation, as a reference to the case will show. This petition has been fully answered in the reply to the petitioners, the Illinois Commerce Commission and Rice.

Conclusion.

For the reasons stated, we respectfully submit that the petitions filed clearly failed to state any tenable ground for granting the writ of certiorari: The petitioners have failed to show any error in the decision of the Circuit Court of Appeals. There being no error shown the admission that the questions are of first impression, refutes the assertion that unnamed "decisions of the Circuit Court of Appeals are probably in conflict with the teachings of this court's decisions most nearly in point." The public interest will not be promoted by the granting of the petition.

Respectfully submitted,

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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 471 and No. 473

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO;
A CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF BOARD OF TRADE OF THE CITY OF CHICAGO, RESPONDENT.

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February 6, 1947.

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IN THE

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OCTOBER TERM, 1946.

No. 471,473.

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,
Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
A CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF BOARD OF TRADE OF THE CITY OF CHICAGO, RESPONDENT.*

OPINION BELOW.

The opinion of the District Court (Tr. 220) is not reported. The opinion of the Circuit Court of Appeals (Tr. 242) is reported in 156 F. (2d) 33.

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* We shall refer to Illinois Commerce Commission, *et al.*, Petitioners, No. 471, as "Commission"; to Daniel F. Rice & Co., *et al.*, No. 473, as "Rice"; to Board of Trade of the City of Chicago, Respondent, as "Board of Trade". The Commission's petition for writ of certiorari stands as its brief in this court and will be hereinafter referred to as "Com. Pet." The brief of Rice will be referred to as "Rice Br."

Jurisdiction.

The District Court had jurisdiction because the right to relief depends on the construction or application of an Act of Congress (subdivision 1a, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (1) (a)) and the suit arose under a law regulating interstate commerce (subdivision 8, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (8)), the Commodity Exchange Act (7 U. S. C. § 1, *et seq.*) being involved. Petitioner invokes the jurisdiction of this Court under Section 240 of the Judicial Code as amended (28 U. S. C. 347).

Question Involved.

The question involved is (a) whether the Commodity Exchange Act (7 U. S. C. A. 1-17a; Rice Br. pp. 31-52; Com. Pet., Appen. III) has completely superseded and rendered inoperative Section 194b* of the Illinois Grain Warehouse Act, as interpreted and applied by the Commission in this case, or (b) whether the relief which could be granted by the Commission on the complaint of Rice would necessarily be coextensive with or in conflict with the Commodity Exchange Act.

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* 194b. Rules of board of trade or grain exchange to be approved.] No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective (First enacted in 1927; Ill. Rev. Stat. 1945, Ch. 114, Sec. 194b)

STATEMENT.

The respondent, Board of Trade, is a corporation created by legislative act of the Illinois State Legislature approved February 18, 1859 (Tr. 28-30). Its activities affect the flow of grain in interstate commerce, and the Congress of the United States has exercised its authority to regulate its activities by legislation commonly known as the Futures Trading Act (An Act of August 24, 1921, c. 86, 42 U. S. Stat. 187), the Grain Futures Act (Act of September 21, 1922, c. 369, 42 U. S. Stat. 998), and lastly the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a). It operates as a board of trade only by virtue of its designation as a contract market by the Secretary of Agriculture by virtue of his authority under the Commodity Exchange Act (Tr. 3).

The complaint filed by Rice before the Commission impleads the Board of Trade with the operators of 13 public warehouses, two of which are licensed by the State of Illinois and the remainder of which are licensed by the Secretary of Agriculture under the Federal Warehousing Act. The Rice complaint is aimed at public warehousing of grain: the 11 federal warehouses under the Federal Warehousing Act do not engage in private storage; the rules and regulations of the Board of Trade relating to private (sometimes called "custodian") warehousing of grain are not involved because it appears in the record that all of the custodian rules and regulations have been approved by the Illinois Commerce Commission (Rule 79g, Tr. 44; Regs. 1230-1242, Tr. 139-143). This is admitted in the Rice Br. p. 7.

Paragraph 15 of the Rice complaint (Tr. 17) directs

the attention of the Commission to the rules and regulations of the Board of Trade "*covering its maintenance as a commercial grain exchange,*"* and (under the prayer for relief, Tr. 19) asks the Commission to declare inoperative and void the rules and regulations which have not received the prior approval of the Illinois Commerce Commission and to require the Board of Trade "*to adopt and submit for approval,* rules and regulations which are fair, equitable, adequate and specific" as determined by the Illinois Commerce Commission. As we have alleged (Tr. 3), the Board of Trade exists as a commercial grain exchange only by virtue of its designation as a contract market by the Secretary of Agriculture under the authority of the Commodity Exchange Act. It cannot exist otherwise.

Initially, the Commission by assuming jurisdiction over the Board of Trade held that it had authority to veto rules and regulations of the Board covering its maintenance as a commercial grain exchange. Inasmuch as this arrogated jurisdiction was co-extensive with and undoubtedly conflicted with the provisions of the Commodity Exchange Act and with the regulations of the Secretary of Agriculture issued thereunder, the petitioners have abandoned such a broad claim. They now concede (Rice Br. p. 8-9; Com. Pet. pp. 28 *et seq.*) that the Commission under Section 194b may only approve or disapprove rules and regulations prepared and submitted to it by the Board of Trade "relating to the warehousing of grain". But they interpret the language of Section 194b (*i.e.* "No rule * * * which relates to the warehousing of grain") in such a fashion that the Commission will have and exercise authority over rules and regulations which do not relate to the warehousing of grain but, on the contrary, which relate to the satisfaction and execution of futures con-

*All italics ours unless otherwise stated.

tracts—a matter entirely covered by the Commodity Exchange Act.

The rules and regulations of the Board of Trade which Rice and the Commission here assert "relate to the warehousing of grain"—and which the Commission therefore may veto—(Rice Br. p. 6; Com. Pet. p. 28) do not essentially relate to the warehousing of grain. They establish conditions which must be met by a state or federal warehouseman if he wishes the warehouse receipts of his elevator to be tenderable in satisfaction of futures contracts, *i.e.* if he wishes his elevator to be "regular."

Rule 281 of the Board of Trade (Tr. 96) provides that warehouse receipts shall be usable for delivery in satisfaction of futures contracts when the warehouse issuing the same has been declared "regular"; the governing board is given authority by regulation to "prescribe the conditions upon which warehouses may be declared 'regular'." Pursuant to this authority the governing board enacted Regulations 1620-1636 (Tr. 155-158). The governing board prior to July first in each year "shall receive applications from persons operating grain warehouses who desire to have such warehouses made regular for delivery of grain . . ." (Reg. 1620) and the conditions precedent to a declaration of regularity are in part as follows:

1. The warehouse must be on water approachable by vessels of ordinary draft. (Reg. 1620.)
2. Connected by railroad with one or more of the eastern railway lines. (Reg. 1626.)
3. The proprietor or manager must be of unquestioned good financial standing or credit. (Reg. 1624.)
4. The proprietor must keep a system of registration of warehouse receipts and furnish information to the Registrar of the Board of Trade. (Reg. 1627.)
5. The warehouseman must furnish bond with sufficient securities to abide by these conditions. (Reg. 1621.)
6. If the warehouseman is a subsidiary corporation, its

obligations must be guaranteed by its parent corporation. (Reg. 1621A.)

7. The warehouse must be provided with modern improvements for expeditious handling of grain. (Reg. 1626.)
8. The warehouse must be open to inspection by committees of the Board of Trade. (Reg. 1632.)
9. The warehouseman must immediately advise the trade when grain stored therein goes out of condition, (Reg. 1628), and agree to certain procedures in the event of such damage to grain. (Rule 296, Tr. 104.)
10. Inasmuch as all futures trading would be disrupted should the rates of storage in the federal houses and state houses be substantially different, specific maximum charges for storage as a condition for regularity are laid down in Regulation 1620. Such charges are the maximum charges fixed by the Illinois statute. Should the State of Illinois fix rates of storage substantially differing from Regulation 1620, then the warehouses subject to Illinois control would automatically become not regular.
11. The warehouse must furnish live transit billing for reshipment or trans-shipment as provided in Regulation 1636. The issuance of bills of lading by the carriers is under the tutelage of the Interstate Commerce Commission.* Neither the Commission nor the Federal Warehousing Authority has issued any instructions or directives regarding the billing to be furnished to those who withdraw grain from federal or state warehouses. Should the Commission issue a directive requiring the Illinois warehouseman on the withdrawal of grain to submit billing different from the live transit billing required by Regulation 1636, then such state warehouses would no longer be regular. Should the Federal Warehousing Authority issue a directive with respect to billing, the federal warehousemen af-

* See *Board of Trade v. Olsen*, 262 U. S. 1, 33; *J. Rosenbaum Grain Co. v. C. R. I. & P. Ry. Co.*, 130 Fed. 46.

fected thereby would still be regular because of the paragraph just immediately following.

12. All federally licensed warehouses are authoritatively made regular by the Commodity Exchange Act. Section 5a(7) requires "that receipts under the United States Warehouse Act shall be accepted in satisfaction of any futures contract made on or subject to the rules of such contract market" without discrimination. The contract market is given authority, however, in the same section to make "reasonable requirements" "as to location, accessibility and suitability for warehousing and delivery purposes."

Assuming *arguendo* that the Commodity Exchange Act is a narrow act having to do only with futures trading, as petitioners contend, it is, nevertheless, a complete legislative regulation of futures trading on contract markets. Futures trading consists not only of the making of the futures contract in the pit but also the satisfaction of such futures contract by offset or delivery. Most deliveries are made by tender of warehouse receipts. The rules of the contract market with respect to deliveries are made a part of each futures contract by the Commodity Exchange Act and by the rules of the Board of Trade itself (Rule 16, Tr. 32). The Commodity Exchange Act is also made a part of the rules (Rule 603, Tr. 118; Reg. 1828, Tr. 180). No contract market can perform its duties under the Commodity Exchange Act (*e.g.* the prevention of manipulation and corners) unless it has a free hand under the Secretary of Agriculture to prescribe the conditions upon which the warehouse receipts of a warehouseman shall be usable to satisfy the delivery provisions of the futures contracts.

In this court for the first time Rice, not the Commission, contends that the Commission may have a small area of jurisdiction beyond the area of the Commodity Exchange Act, namely, jurisdiction to approve or disapprove rules and regulations of the Board relating to the *private* ware-

housing of grain (Rice Brief, p. 6). The Rice complaint does not concern private warehouses. No private warehouseman is a defendant as such. As a basis for relief, no mention is made in the Rice complaint of any specific rule or regulation of the Board of Trade relating to custodian (*i. e.*, private) houses. All regulations of the Board of Trade relating to the custodian (private) department have been approved by the Commission. (See Regulations 1230-1242, Tr. 139-143, Rule 79(g), Tr. 44; see also Rice Br. p. 7.) The custodian rules, as a matter of history, were adopted by the Board of Trade at the request of the bankers with the approval of the Commission in order that private warehouse receipts would be "eligible for rediscount under Federal Reserve Board requirements" (*idem*). Any private warehouseman who does not desire his receipts to have this extra validity need not comply with the custodian rules. It is purely voluntary. Assuming *arguendo* that the Commission has complete jurisdiction over such custodian rules and regulations, nevertheless such postulated jurisdiction is in no way involved in this case.

The Commission, for the State of Illinois, has stretched the language of Section 194b to enable itself to veto ordinances of the Board of Trade which relate to the "regularity" of warehouses and has thereby usurped power over the Board of Trade as a contract market. We respectfully submit that the conclusion of the Circuit Court of Appeals is correct (Tr. 261), 156 Fed. 2nd 33, 44:

> "It is plain, so we think, that any rule or regulation promulgated by the Board of Trade relative to its transactions in warehouse receipts must conform to and be consistent with the requirements of the federal authority in connection therewith. Any rule or regulation in conflict with or in excess of such authority would be invalid and this would be so whether or not it was approved by the Illinois Commission. It

is equally plain that any rule or regulation promulgated by the Commission concerning the same subject matter, which conflicted with or exceeded the power vested in the federal authority, would be of no effect. We therefore are of the view that Congress has invaded the precise field occupied by the Illinois Commission by reason of § 194 (b) of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

SUMMARY OF ARGUMENT.

The Index contains a paginated summary and outline of the argument.

ARGUMENT.

I.

The Commodity Exchange Act Exclusively Occupies the Field of Regulation of Contract Markets and The Illinois Commerce Commission Is Therefore Without Power to Regulate the Board of Trade.

A. The Board of Trade and Warehousing.

The Board of Trade is, as said in *Board of Trade* v. *Olsen*, 262 U. S. 1, "the greatest grain market in the world." It is not a public utility under the Illinois Public Utilities Act. It is a place for doing business. No service charges are made. The only authority of the Commission over the Board of Trade is in Section 194b of the Illinois Grain Warehouse Act.

The Board of Trade, as a contract market, is necessarily concerned with the public warehousing of grain because the Commodity Exchange Act imposes certain duties upon contract markets with respect thereto; *e.g.*:

1. There must be sufficient warehousing facilities to warrant the maintenance of futures trading (sec. 5(a)) in an orderly, economic manner.

2. Contract markets must prevent manipulation of prices and corners (sec. 5(d)). This necessarily relates to cash and futures and the interrelationship of each with the other.

3. The receipts of federally licensed warehouses (all of which are public warehouses) must be made tenderable in satisfaction of futures contract without discrimination (sec. 5a(7)),

4. Every futures contract contemplates fulfillment by delivery and acceptance of grain of federal grades and standards (sec. 5a(6)). Delivery of grain in sat-

isfaction of futures contracts during the last three business days of the delivery month may be made in car lots (Rule 282, Tr. 96), by bills of lading. But most deliveries are made by delivery of public warehouse receipts.

Obviously the contract market alone, under the Commodity Exchange Act and the rules and regulations promulgated by the Secretary of Agriculture, must determine what warehouses shall be "regular." Should the Commission be allowed to exercise its usurped authority to order a contract market to declare warehouses regular when they are not located on water, have no eastern railroad connections, are located at points far from the contract market, charge rates in excess of other "regular" houses, or are not equipped expeditiously to load and unload—should the Commission be allowed to exercise such authority, the contract market will be unable to perform the functions imposed upon it by federal authority. This conflict would inevitably result whether the authority of the Commission be an affirmative authority (to issue a directive, as contended for by Rice in his complaint), or whether it be a negative authority (to veto rules and regulations submitted to it by the Board, as Rice here contends).* The "regularity" of warehouses must be a matter for the exclusive determination of the contract market if it is to be held responsible for performance of the duties imposed on it by the Commodity Exchange Act.

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* In *First Iowa-Hydro-Electric Cooperative* v. *Federal Power Commission*, 66 Sup. Ct. 906, this Court said of a state law requiring a state permit prior to the construction of a project under the Federal Power Act:

> "Such a veto power easily could destroy the effectiveness of the federal act. It would subordinate to the control of the State the 'comprehensive' planning which the Act provides shall depend upon the judgment of the Federal Power Commission or other representatives of the Federal Government."

B. The Commodity Exchange Act.

The Commodity Exchange Act is not limited in its scope to the mere coverage of futures trading in the futures pit. Every futures contract is made subject to and contains all of the rules and regulations of the Board of Trade. Particularly important are those relating to delivery of grain in satisfaction of such contracts. Regulation of futures trading entails regulation of deliveries. It is impossible for the Federal Government to control futures trading unless it also controls the whole futures contract, not only the making of the contract, but the satisfaction of the contract. There can be no justifiable futures trading on a contract market where cash grain prices are manipulated, where the grain itself is cornered, or where there is wide divergency in the warehouse receipts which satisfy such contracts. Hence the Commodity Exchange Act imposes on contract markets the duty, under the Secretary of Agriculture, of preventing manipulation of prices, of preventing corners, and of unifying and standardizing deliverable warehouse receipts. The interference of any state authority in these fields would defeat the objectives of the Commodity Exchange Act. A review of the pertinent provisions of the Commodity Exchange Act demonstrates the soundness of this position:

Section 2 (a) defines "contract of sale" as including "sales, agreements of sale, and agreements to sell"; "commodity" as meaning wheat, cotton, rice, corn, oats, barley, rye, flaxseed, butter, eggs, etc.; "future delivery" shall not include any sale of any cash commodity for deferred shipment or delivery; "board of trade" includes any exchange "of persons who shall be engaged in the business of buying or selling any commodity or receiving the same

for sale on consignment"; "member of a contract market" shall mean and include individuals, etc. "owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon."

Section 2 (b) provides that a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, etc.

Section 3 states that transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade are affected with a national public interest, etc.; that the transactions and prices of commodities on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling commodities and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in commodities.

Section 4 provides that trading in futures shall only occur by contract made by or through a member of a contract market designated by the Secretary of Agriculture as a contract market, evidenced by a record in writing showing the date, the parties and their addresses, the property, the price and the terms of delivery.

Section 4a. enables the Secretary to fix different trading limits for different commodities, markets, futures or delivery months, etc.

Section 4b. makes it unlawful for any member of a contract market in or in connection with any order to make, or the making of "(1) any contract of sale of any commodity in interstate commerce, or (2) any contract of sale of any commodity for future delivery" to cheat or defraud, make false report or statement, etc. This is not limited to futures contracts, but to the sale of any commodity in interstate commerce.

Section 4c. prohibits wash sales, cross trades, trading in indemnities, puts, calls, etc. and provides:- "Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities", etc. The foregoing (as well as the other provisions of the Act) shows the interrelation of cash transactions and futures trading.

Sections 4d., 4e. and 4f. concern trading in futures and the registration of futures commission merchants and floor brokers.

Section 4g. provides for suspension or revocation of the registration of a futures commission merchant or floor broker.

Section 4h. provides that it shall be unlawful for any person to make any contracts for the purchase or sale of any commodity for future delivery, etc. that are or may be used for hedging or determining the price basis or delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, if such orders, etc. are executed or consummated otherwise than by or through a member of a contract market.

Section 4i. provides for the limitation of the amounts of futures that may be purchased or sold and covers records and reports of the transactions.

Section 5 is very important. It provides that the Sec-

retary of Agriculture is authorized and directed to designate any board of trade as a contract market when, and only when, such board complies with and carries out certain requirements, including (a) when located at a terminal market *where any cash commodity* of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity; (b) when the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations prescribed by the Secretary of Agriculture *"showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery,"* and when the governing board provides for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, "showing the details and terms *of all cash and future transactions* entered into by them, consummated at, on, or in a board of trade;" (c) when the governing board provides for the prevention of dissemination by the board or any member thereof, of false or misleading reports concerning crop or market information; (d) when the governing board thereof provides *for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board*; (e) when the governing board does not exclude a "co-operative association of producers having adequate financial responsibility *which is engaged in any cash commodity business.*"

Section 5a. is also important as far as this case is concerned, in that it provides that each contract market shall (1) promptly furnish the Secretary of Agriculture copies

of all *by-laws, rules, regulations* and resolutions made or issued by it *or by the governing board thereof or any committee, and all changes and proposed changes therein;* (2) allow inspection of all records; (3) require *"the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary may prescribe;"* (4) provide for delivery during the delivery month after trading has ceased; (5) provide for the delivery notice; (6) require all futures contracts of sale to provide for the delivery in grades conforming to the U. S. standards; and (7) require that receipts issued under the United States Warehouse Act shall be accepted in satisfaction of any futures contract, without discrimination *"and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law."* There is a proviso to the clause that such receipts shall be for the kind, quality, and quantity of commodity specified and that the warehouse in which the commodity is stored shall meet "such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes."

It clearly appears by these paragraphs (3, 6 and 7 of Section 5a.) that the Commodity Exchange Act makes the warehouses in the terminal market in which the contract market is located part of the machinery of the Board of Trade and that the Commodity Exchange Act has preempted the field as far as delivery of warehouse receipts for grain on futures contracts is concerned. The last clause specifically provides that the contract market must permit

without discrimination, United States Warehouse receipts, to satisfy futures contracts.

Section 5b. provides that the failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules or regulations of the Secretary of Agriculture thereunder, shall be cause for suspending or revoking the designation of the board as a contract market.

Section 6(a) provides for a Commission, consisting of the Secretary of Agriculture, Secretary of Commerce, and the Attorney General of the United States, authorized to suspend or revoke the designation of a board of trade as a contract market upon a showing that the board has failed or is failing to comply with any of the requirements as above set forth, or is not enforcing its rules of government as set forth in Section 5 above referred to.

Section 6a. requires that a board of trade shall not exclude from membership any cooperative association of producers engaged in cash commodity business having adequate financial responsibility, unless authorized by the Commodity Exchange Commission, etc.

Section 6b. provides that if any board of trade, or director, or officer, etc., is violating or has violated any of the provisions of the Act or any of the rules or regulations of the Secretary of Agriculture, etc., the Commission (designated under the Commodity Exchange Act, section 6(a) consisting of the Secretary of Agriculture, the Secretary of Commerce and the Attorney General of the United States) may, in lieu of revoking the designation as a contract market, direct said board to cease and desist from such violations, and if such board, etc., shall fail or refuse to comply with the order, the guilty party may, upon conviction, be fined not less than $500 nor more than $10,000 or imprisoned for not less than six months nor

more than one year, or both. This is a penalty that could be enforced against the Board of Trade and its members if the Board complied with improper orders of the Illinois Commerce Commission. It is unbelievable that Congress ever intended to permit a state to attempt to regulate a designated contract market when, by reason of such regulation, the contract market and its members might be subjected to criminal penalties.

Section 8 authorizes the collection of information "for the use of Congress," and provides for such investigations as the Secretary of Agriculture may deem necessary to ascertain the facts regarding the operations of boards of trade, and the Secretary may, upon his own initiative or in co-operation with existing governmental agencies, investigate marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to consumer, and handling and transportation charges. Thus, under the Commodity Exchange Act, the Secretary of Agriculture not only licenses the contract market, but the Secretary of Agriculture is also directed to investigate marketing conditions in order to provide information for Congress for such use as it sees fit. The foregoing gives the Secretary of Agriculture, in so far as the Board of Trade is concerned, the opportunity to do what plaintiff requests the Illinois Commerce Commission to do (Tr. 18)—"institute an inquiry and investigation of the unjust, unreasonable and discriminatory rates and practices, the inadequate, improper, and unsafe services rendered."

Section 8a. authorizes the Secretary of Agriculture (5) to make rules and regulations to accomplish the purposes of the Act and (6) to publish the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Secretary

disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers.

Section 9 provides severe penalties for violation of the provisions of Sections 4, 4a., 4b., 4c., 4e., 4h., and 4i. by members of the contract market.

C. Regulations of the Secretary of Agriculture.

In pursuance of the Act, the Secretary of Agriculture has issued regulations. These, so far as the Board of Trade and the Illinois Commerce Commission are concerned, have the force and effect of law. It becomes necessary therefore to analyze such regulations. These regulations are contained in Exhibit D attached to the complaint filed in the District Court (Tr. 207) and are contained in the Appendix to this brief.

In Section 1.3 a board of trade is defined as meaning "any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on assignment." This refers to cash grain as well as futures trading.

Other regulations refer to registration of futures commission merchants and floor brokers. (Sections 1.7 to 1.16.)

Sections 1.17 to 1.30 refer to reports of commission merchants and the handling of customers' funds. Section 1.35 requires the keeping of full and complete records of all commodity and futures transactions and cash commodity transactions made by and through the member on or subject to the rules of a board of trade.

Section 1.41 requires that each contract market shall promptly furnish to the Administration copies of all by-

laws, rules, regulations and resolutions, as authorized by Section 5a (1) of the Commodity Exchange Act.

Section 1.43 of the regulations directs that each contract market shall file with the Food Distribution Administration of the United States Department of Agriculture a list of all warehouses (both state and federally licensed) in which or out of which commodities are deliverable in satisfaction of futures contracts made on or subject to the rules of such contract market, which list shall show the name, location, and storage capacity of each such warehouse, together with the name and the business address of the operator thereof, and such list shall be accompanied by a schedule of the storage charges, handling charges, and the annual fire insurance rate applicable to each such warehouse. The Administrator shall be kept concurrently advised of all changes affecting such information.

Section 1.44 requires each contract market to require the operators of warehouses whose receipts are deliverable in satisfaction of commodity futures contracts made on or subject to the rules of such contract market to keep records and (c) "to permit visitation of the premises and inspection of the books and records of such warehouses by duly authorized representatives of the United States Department of Agriculture or the Department of Justice." This regulation applies not only to Federally licensed warehouses, but to all warehouses made regular by the rules of the Board of Trade, including those warehouses licensed by the State. It shows that in so far as the Commodity Exchange Act is concerned the activities of such state licensed warehouses are under the visitorial scrutiny of the Secretary of Agriculture. Federal or state warehouses must, in order that grain stored therein may be deliverable in satisfaction of futures contracts, comply

with the provisions of Board of Trade rules required by this Section.

In pursuance of Section 1.44 the Board enacted Regulations 1627 and 1632 (Tr. 156-157; See also Rule 603, Tr. 118 and Regulation 1828, Tr. 180). Yet these are the regulations, according to Rice (Rice Br., p. 20) which must be submitted to the Commission for approval or disapproval. True, the Commission might approve them, but it is also true that the Commission might disapprove them. This obvious conflict demonstrates, we submit, that the Board of Trade should not be subjected to the authority of the Commission in respect of its regulations concerning the regularity of warehouses.

Section 1.45 requires the delivery of commodities under futures contracts to conform to United States standards.

The foregoing orders of the Secretary of Agriculture, as well as the Commodity Exchange Act itself, demonstrate that futures trading cannot be regulated without a synchronous regulation of deliveries. Warehouse receipts of federal warehouses must be authorized by contract markets for delivery. But whether warehouse receipts issued by state warehouses shall or shall not be accepted as satisfaction of futures contracts is a matter over which the Commission is given no control by Sec. 194b; and, if it usurps such control—as it here seeks to do—it must be restrained by the federal courts in order that contract markets may be able to fulfill the duties imposed upon them by the Commodity Exchange Act and the directives of the Secretary.

D. Reference to State Law in the Commodity Exchange Act.

By specifically reserving state jurisdiction over two matters covered in the Commodity Exchange Act, Congress has shown a legislative intent that there shall be no state

jurisdiction over the other matters covered in the Commodity Exchange Act.

Section 4b of the Commodity Exchange Act declares it unlawful for any member of a contract market to use the contract market to cheat or defraud; to make wilful false statements; to deceive or attempt to deceive in regard to any order or contract; or to bucket an order. Section 4c prohibits wash sales, cross trades, accommodation trades, fictitious sales, and prohibits dealings in "privileges"; and also prohibits transactions to be used to cause any fictitious prices to be reported. Section 4c contains the following provision to permit additional state regulation in respect to these two matters:

> "Nothing in this section or in Section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections."

These sections emphasize that Congress has taken complete control of the contract market in all other respects. The prohibition of state action in other respects is to be inferred when Congress states that state action may take place in these particular respects. It is said in 50 Am. Jur. 455, Statutes, Section 434:

> "§ 434.—Effect of express exceptions.—The specification by the legislature of exceptions to the operation of a general statute does not necessarily operate to preclude the court from applying other exceptions. However, where express exceptions are made, the legal presumption is that the legislature did not intend to save other cases from the operation of the statute. In such case, the inference is a strong one that no other exceptions were intended, and the rule generally applied is that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted, and *excludes all other exceptions or the enlargement of exceptions made.* Under this principle, where a general rule has been estab-

lished by a statute with exceptions, the courts will not curtail the former, nor add to the latter, by implication. In this respect, it has been declared that the courts will not enter the legislative field and add to exceptions prescribed by statute."*

Also supporting our view is the language of this court in *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 66 Sup. Ct. 906, where it is said:

"Section 27 expressly 'saves' certain state laws relating to property rights as to the use of water, so that these are not superseded by the terms of the Federal Power Act. It provides:

" 'Sec. 27. That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.' 41 Stat. 1077, 16 U. S. C. § 821.

"Section 27 thus evidences the recognition by Congress of the need for an express 'saving' clause in the Federal Power Act if the usual rules of supersedure are to be overcome. * * *

* * * * * *

"This section therefore is thoroughly consistent with the integration rather than the duplication of federal and state jurisdictions under the Federal Power Act. It strengthens the argument that, in those fields where rights are not thus 'saved' to the states, Congress is willing to let the supersedure of the state laws by federal legislation take its natural course."

* "It is well settled that an exception in a statute * * * excludes all other exceptions." 25 R. C. L. 983. "Provisos are construed as affecting the paragraph to which they are annexed." *Spring* v. *Olney*, 78 Ill. 101, 105; *Bass* v. *B. & O. T. R. Co.*, 142 F. (2d) 776, 778. "No further exceptions may be read into the act." *People* v. *Deep Rock Oil Co.*, 343 Ill. 388, 401.

If Congress had intended to "save" to the State its regulatory powers other than those indicated in Sections 4(b) and 4(c), it would have had to have a saving clause such as is to be found in Section 3 of the Act of March 3, 1927, 44 stat. 1355, 7 U. S. C. § 496 (relating to dumping of farm products) as follows:

> "§ 496. *Validity of other statutes dealing with same subject.* This chapter shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this chapter, but it is intended that all such statutes shall remain in full force and effect, except in so far only as they are inconsistent herewith or repugnant hereto. Mar. 3, 1927, c. 309, § 3, 44 Stat. 1355."

See, also, the saving clause in the Act of April 29, 1878, 20 Stat. 37, quoted in *Morgan* v. *Louisiana*, 118 U. S. 455, where (465) it was provided that "there shall be no interference in any manner with any quarantine laws or regulations as they now exist or may hereafter be adopted under State laws."

E. Cooperation Between State and Federal Authorities.

The only other reference to state authority is found in Section 12, which reads as follows:

> "Sec. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, *or any person;* and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Columbia and elsewhere,

and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose."

By no manner of reasoning can it be said that this section surrenders any of the control of Congress over a contract market to any state or department, agency or political subdivision thereof or to "any person." The Secretary of Agriculture *may* cooperate with any department or agency of the Government or any state; but the state is not authorized to interfere with the Secretary of Agriculture or with the objectives of the Commodity Exchange Act.

There are many matters in which the Secretary of Agriculture may cooperate with state authorities to the advantage of both. The information collected by the Secretary of Agriculture under the Commodity Exchange Act might well be of importance to state regulatory bodies in one way or another. Again, state information concerning possible violations of the Commodity Exchange Act by exchanges, brokers, or commission houses, would be of importance to the Secretary. But this is far from saying that permission to the Secretary of Agriculture to cooperate with the states is an indication of intention that the states may likewise regulate contract markets or regulate deliveries on futures contracts.

The case most strongly relied upon by Rice and the *amicus curiae* is *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, where the State of Minnesota required all foreign corporations to have a certificate to transact business in the State and to pay a license fee. A North Dakota customhouse brokerage corporation conducted business in Minnesota without obtaining such certificate. As an excuse for not complying with the General Minnesota Foreign Corporations Law the customs house brokerage company asserted that it had obtained a license to conduct a custom

house brokerage business from the Secretary of the Treasury. This was held to be no excuse: there was no conflict between the General Minnesota Foreign Corporations Law and the Federal Custom House Brokerage Law. It was apparent from the Treasury regulations that a foreign custom house brokerage concern must be "authorized to do business in the state or states in which the other" custom house district is located. Whereupon the court used the language so frequently quoted by our opponents: "Where the Government has provided for collaboration the courts should not find conflict." The court said at page 211:

> "We have considered literally scores of cases in which the States have exerted authority over foreign corporations and in doing so have dealt with aspects of interstate and foreign commerce. Whatever may be the generalities to which these cases gave utterance and about which there has been, on the whole, relatively little disagreement, the fate of state legislation in these cases has not been determined by these generalities but by the weight of the circumstances and the practical and experienced judgment in applying these generalities to the particular instances. To review them to any extent would be writing the history of the adjudicatory process in relation to the Commerce Clause."

We do not ask this court to find conflict in respect of matters in which cooperation has been commanded. The states specifically are given authority to legislate regarding wash sales and fictitious trades, etc., as above set forth. The Secretary of Agriculture is permitted to cooperate in the respects mentioned. But the Commission in this case is not cooperating with the Secretary. It is asserting authority which conflicts with the Commodity Exchange Act.

It is significant, we submit, that the "cooperation sec-

tion" of the Commodity Exchange Act above quoted does not contain a saving clause for concurrent state action. In the Perishable Agricultural Commodities Act and the Export Standards Act, federal authorities are permitted to cooperate with state authorities, but both acts contain the following clause:

> "* * * This chapter shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this chapter; but it is intended that all such statutes shall remain in full force and effect except in so far only as they are inconsistent herewith or repugnant hereto." (7 U. S. C. 499o; 7 U. S. C. 587.)

Furthermore, the section provides that the Secretary of Agriculture may cooperate with any department of the government, any state, territory, "* * * *or any person.*" There cannot be any doubt that this clause does not give "any person" with whom the Secretary cooperates any supervisory or regulatory powers over contract markets.

F. The Authorities—Since Congress Has Assumed Completely to Regulate and Control Contract Markets, State Regulation Is Superseded and Excluded.

In the companion cases, *Illinois Commerce Commission* v. *Great Lakes Elevator Corporation*, Nos. 470 and 472, this point will be more fully covered.

In *Pennsylvania Railroad Company* v. *Public Service Commission*, 250 U. S. 566, it is said (569):

> "* * * when the United States has exercised its exclusive power over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them."

Again, in *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, the Supreme Court in 1941 said (155-156):

> "Exclusive federal regulation may arise, also, from

the exercise of the power of Congress over interstate commerce where, in the absence of Congressional action, the states may themselves legislate. It has long been recognized that, in those fields of commerce where national uniformity is not essential, either the state or federal government may act. *Willson* v. *Black-bird Creek Marsh Co.*, 2 Pet. 245; *California* v. *Thompson*, 313 U. S. 109, 114. Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation. But where the United States exercises its power of legislation so as to conflict with a regulation of the state, *either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application.*"

See also *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 605; *Hill et al.* v. *Florida*, 65 S. Ct. 1373 and *Southern Pacific Company* v. *Arizona*, 65 S. Ct. 1515.

Rice (Br. p. 11) and the Commission (Pet. p. 26) cite *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188, and *State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621, for the proposition that not only is the Commodity Exchange Act very limited in scope but also that it does not even cover the field of futures trading. This court held in the *Dickson* case that, as to the agreement between customer and broker located in Missouri, the application of the Missouri gambling laws was supreme because, *first*, the Grain Futures Act did not purport to legalize the agreement entered into between customer and broker; *second*, because the Missouri law did not attempt to invalidate the agreement made by Uhlmann Grain Company on the floor of the exchange pursuant to the Missouri agreement (p. 193) and did "not prescribe regulations for exchanges" (p. 199)—which here the State of Illinois seeks to do by its interpretation of Section 194b. The distinction we seek to draw

is made plain by *Albers* v. *Lamson*, 380 Ill. 35, where both agreements (the one between a customer and broker and the one between brokers on the floor of the exchange) were both executed in the State of Illinois and where the court held that the Commodity Exchange Act had superseded any attempted state interference with the validity of such contracts.

Numerous other cases might be cited but we think that the foregoing are sufficient to show that since the Congress has assumed complete control of futures trading on the Board of Trade it has pre-empted and occupied that field including deliveries: state authority over its operation as a contract market has been superseded. See also *In Re Farmers Cooperative Assn.* (Supreme Court, S. D. 1943), 8 N. W. (2d) 557.

II.

Any Order Entered By the Commission Against the Board of Trade Would Be in Coincidence with or Repugnant to the Control of Futures Trading Now Exercised in and Under the Commodity Exchange Act.

Assuming *arguendo* that the Commodity Exchange Act is not a complete occupation of the "contract market" field by the Federal government, nevertheless any relief which could be granted on the Rice complaint would cover the same area of futures trading now occupied by the Commodity Exchange Act.

If all functions of contract markets have not been regulated by the Commodity Exchange Act, manifestly all functions relating to every aspect of futures trading have been taken over.

A. An Order of the Commission Granting the Relief Prayed for by Rice Would Conflict With the Commodity Exchange Act.

Paragraph 15 of the complaint (Tr. 17) alleges that the Board of Trade "has formulated and adopted rules and regulations governing its maintenance as a commercial grain exchange" and these rules and regulations should be such as to promulgate the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market. In other words, Rice prays relief against the Board of Trade as a "commercial grain exchange," *i. e.*, as a contract market, a field already covered by the Commodity Exchange Act.

Again, Rice's complaint alleges that the rules and regulations of the Board of Trade are "uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers and in many other respects are unreasonable and unsatisfactory" (Tr. 18); again indicating that Rice wishes the Commission to supervise the Board of Trade as a "commercial grain exchange."

Again (Tr. 19) Rice prays that the Commission "require said Chicago Board of Trade to adopt and submit for approval rules and regulations which are fair, equitable, adequate and specific." This again is a prayer that the Commission enlarge, duplicate or nullify the regulatory provisions of the Commodity Exchange Act in respect of the Board of Trade as a contract market.

B. An Order of the Commission Granting Relief Under Its Interpretation of Section 194b Would Conflict With the Commodity Exchange Act.

But Rice and the Commission here assert that this Court should not assume that the Commission would grant relief in excess of its authority, and point out that under Section 194b the Commission is given authority only to approve

or disapprove rules submitted to it by the Board of Trade "relating to the warehousing of grain."

But as above pointed out, the Board of Trade has adopted no rules and regulations with respect to warehouses save those rules and regulations above discussed which lay down the conditions on which a warehouse shall be made regular. If the Commission be held to have authority to determine what warehouses shall be considered regular or to determine the conditions under which any warehouse shall be considered regular, the Commission would thereby be given power to dictate how futures contracts shall be satisfied. The license of the Board of Trade is a contract market, is cancelable if it does not maintain futures trading (including deliveries) on the plane prescribed in the Act. To divide this responsibility between the Board of Trade and the Commission is to pronounce the Board's death sentence.

Congress has decreed that receipts from Federal warehouses shall be tenderable in satisfaction of futures contracts. Assuming power in the Commission to determine regularity, this requirement of the Congress might also be nullified. The Board of Trade would be between two masters.

C. Private or Custodian Warehouses Are Not Involved in This Case.

Searching to find an unoccupied area for the exercise of state jurisdiction, petitioners now here suggest for the first time that the Commission might only assume power over rules and regulations of the Board of Trade relating to private (*i.e.*, custodian) warehouses. We have above pointed out that the Board of Trade is impleaded in the Rice complaint with public warehousemen; that no rule or regulation of the Board of Trade relating to private warehouses has been mentioned in the complaint as a

basis for relief; that each rule and regulation of the Board of Trade relating to private houses has been submitted to the Commission and has been approved. The eleven Federal warehouses impleaded with the Board of Trade do not engage in private storage. It is admitted that all of the Board of Trade custodian rules and regulations have been approved by the Commission (Rice Br. p. 7).

The Commission would have granted the motion of the Board of Trade to be dismissed from the case if it had considered its authority limited to the approval or disapproval of rules and regulations relating to private houses.

D. Three Other Theories Advanced by Petitioners to Justify an Order of the Commission Against the Board of Trade Are Unfounded.

First: Rice states (p. 2):

> "The board was joined as a defendant to the end that the improvement sought in warehousing practices could be in part achieved through board rules and regulations (R. 10-19)."

This apparently implied that the Commission cannot improve warehousing practices in the warehouses over which it has jurisdiction in a direct proceeding against the warehouses; but that the joinder of the Board of Trade is necessary in order that some of the improvements be achieved.

Nothing could be further from the truth. If the laws of Illinois do not permit the Commission to order the improvement of hypothetical practices in a direct proceeding against the warehousemen themselves, surely the improvement of such hypothetical practices cannot be obtained in

directly by an order against the Board of Trade under Section 194b.

Furthermore, any order validly entered by the Commission against the warehousemen will be valid and binding upon the warehousemen and the public notwithstanding any rules or regulations of the Board of Trade with respect to "regularity." If the Commission enters a valid order against the state elevators which disenables them from meeting the Board of Trade's conditions of regularity, such state elevators would automatically be disqualified from regularity.

Second: It is suggested by the Commission (Com. Pet. p. 19) that it is merely seeking "to conduct the investigation which the Circuit Court of Appeals says must be restrained * * *." The Commission's brief sets forth the laws of Illinois with respect to warehouses and public utilities (p. 19) apparently to show that the Commission may conduct investigations into the affairs of public utilities. The Board of Trade is admittedly not a public utility. It admittedly operates no warehouses. The sole authority of the Commission over the Board of Trade is contained in 194b. The launching of this case against the Board of Trade cannot be justified as a mere investigation. If the Board of Trade or any other person, firm or corporation has information valuable to the Commission, this information may be obtained by subpoena in a proper case.

Third: Both Rice (p. 23) and the Commission (p. 29) have set forth in identical language four "warehouses or warehousing functions which are no part of the futures delivery mechanism" and for which, they say, the Board has adopted regulations. They contend that, since these functions are no part of the delivery mechanism, such functions are therefore not embraced in the federal control of futures trading and are therefore subject to state

regulation. An analysis of these four alleged functions is as follows:

a) "Warehousing of public grain in houses that *have not been designated as regular* for delivery of grain in satisfaction of futures contracts." (Italics theirs.)

There are no rules and regulations in any way touching on public warehouses that have not been declared regular. As above stated, the only rules and regulations of the Board of Trade having to do with public warehouses are those regulations which establish conditions precedent to regularity.

b) "Custody of grain in *private* warehouses, and control of custodian receipts." (Italics theirs.)

This case, as above explained, does not involve private warehouses and the only rules and regulations of the Board of Trade relating thereto have been approved by the Commission.

c) "Warehousing of actual grain which is not used in connection with futures trading or deliveries on futures contracts."

There are no rules and regulations of the Board of Trade relating to the public warehousing of grain not usable for delivery on futures contracts. True, not all of the grain in a regular warehouse will be tendered in satisfaction of futures contracts; but all of the grain therein is potentially usable to satisfy futures contracts. The warehouse receipts on all of the grain in such regular warehouses may be tendered in satisfaction of futures contracts. All of the grain in regular warehouses of the same grade is commingled unless special-binned or otherwise segregated. When grain is accepted for storage by a regular house it is usable for delivery in satisfaction of futures contracts and the conditions imposed by the Board on regular houses

must be conformed to until the certificate of regularity is canceled.

d) "The rates and practices under which actual grain is stored and handled by warehousemen."

There are no Board of Trade regulations with relation to the rates and practices under which actual grain is stored or handled save those rules and regulations which are conditions of regularity.

If the Commission has authority under the Illinois warehousing or public utility laws to prescribe rates and practices for warehousemen (which is the matter at issue in Nos. 470 and 472) there is nothing in the rules and regulations of the Board of Trade which hinders, prevents or in any way deters the Commission from so doing.

The foregoing analysis demonstrates, we submit, that petitioners have found no area involved in this case where the rules and regulations of the Board of Trade are unconnected with futures contracts or deliveries effectuated thereunder.

E. Authorities.

It is obvious and is admitted by petitioners that any order of the Commission which would conflict with the Federal enactment or the Secretary's regulations thereunder would be superseded and inoperative (*Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148). By refusing to dismiss the Board of Trade the Commission indicates that it claims authority to issue directives based on its erroneous construction of Section 194b—a construction, however, which is binding on the federal judiciary.

It is respectfully submitted that any order which the Commission might issue in pursuance of the Rice complaint would occupy the same field as that occupied by the Federal authority and would therefore be inoperative and void (*Public Utilities Commission of Ohio v. United Fuel Gas Co.*, 317 U. S. 456; *Hart Coal Corp. v. Sparks*, 9 F. Supp. 825). We ask leave to rely also upon the precedents cited in Nos. 470 and 472.

III.

Jurisdiction of the Federal District Court—the Johnson Act.

The Attorney General has adopted the Commission's petition for writ of certiorari as its brief in this case. He contends that the district court was without jurisdiction because of the Johnson Act (Com. Pet. p. 12).

The Johnson Act amendment, § 24 (1) of the Judicial Code (28 U. S. C. A., § 41 (1)), refers to a suit to enjoin the enforcement of any order of a state administrative body or commission, or any rate-making body, or to restrain any action in compliance with any such order

> "where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

This is not applicable here because:

The suit is not based upon the ground of diversity of citizenship. It is not claimed that the assumption of jurisdiction by the Commission is repugnant to the Constitution of the United States. The order of the Commission would not affect rates chargeable by a public utility nor are there any service charges of the Board of Trade. The Board of Trade is a grain market "engaged in a business affected with a public national interest and is subject to national regulation as such" and it is not a public utility under the laws of Illinois. The order plainly interferes with interstate commerce, for the reasons set forth in Point I.

A. It Is Not Claimed That the Assumption of Jurisdiction by the Commission Is Repugnant to the Constitution of the United States.

We do not contend that the State statute is unconstitutional. We contend that Section 194b, as interpreted by the Commission, was superseded by the Commodity Exchange Act, and we contend, and have always contended, that the State statute as thus interpreted and applied by the Commission conflicts with the Commodity Exchange Act. This does not raise any question of the unconstitutionality of a State law or of repugnance to the Federal Constitution.

In the early case of *Sturges* v. *Crowinshield*, 17 U. S. (4 Wheaton) 122, it was contended that the mere granting of power in the 8th section of the first articles of the Constitution providing

> "The Congress shall have power * * * to establish * * * uniform laws on the subject of bankruptcy throughout the United States * * *."

operated to make the New York insolvency law invalid. Chief Justice Marshall, referring to the Federal Bankruptcy Act, said (196):

> "It has been said, that congress has exercised this power; and by doing so, has extinguished the power of the states, which cannot be revived by repealing the law of congress.
>
> "We do not think so. If the right of the states to pass a bankrupt law is not taken away by the mere grant of that power to congress, it cannot be extinguished; it can only be *suspended*, by the enactment of a general bankrupt law. The repeal of that law cannot, it is true, confer the power on the states; but it removes a disability to its exercise, which was created by the act of congress."

In *Cloverleaf Butter Co.* v. *Patterson*, (C. C. A. 5th Cir.) 116 F. (2d) 227, the Cloverleaf Butter Co. brought an ac-

tion against Patterson as Commissioner of Agriculture and Industries of the State of Alabama, and others, to restrain the defendants from seizing, or suspending from use, butter moving in interstate commerce into Alabama and into plaintiff's plant for renovating and processing, the claim of plaintiff was that by the congressional enactment relating to processing or renovating butter and the regulations promulgated pursuant thereto, Congress had preempted the field of manufacture of processed or renovated butter in interstate commerce, to the exclusion of the State of Alabama, its officers and agencies. The court said (230):

> "Appellees, in limine, question our jurisdiction, insisting: (1) That the attack was upon the constitutionality of a statute and the district judge as a single judge, was without jurisdiction of the case, so that no appeal lies to this court from his decision; (2) that no substantial federal question was presented and there was no federal jurisdiction, and (3) that the suit is one against the state of Alabama and as such is forbidden by the 11th Amendment.
>
> "We reject these contentions as wholly without merit. The suit was not one for three judges. It did not attack the constitutionality of the Alabama statutes, it affirmed their constitutionality. It was not a suit against the state but one within the recognized federal jurisdiction against persons purporting to act as officers of a state and, as such, to deprive citizens of rights granted them by the federal constitution and laws. Nor can it be said of it that it did not seriously present a substantial federal question. For, if appellant is right in its contention that the federal statutes and regulations have completely occupied the field, so as to exclude the state of Alabama from the exercise of its police powers, with regard to the inspection and seizure for condemnation of country and packing stock butter, the actions of defendants under purported state authority would be clearly in violation of a federal right and enjoinable as such."

This Court reversed on another point.

It thus appears that the claim of federal supersession of State law does not raise any question of repugnance to the federal constitution, as said in *Ex parte Bransford*, 310 U. S. 354, (358-359):

> "The declaration of the supremacy clause gives superiority to valid federal acts over conflicting state statutes but this superiority for present purposes involves merely the construction of an act of Congress, not the constitutionality of the state enactment."

When a state law is thus superseded, it is not unconstitutional and void: it simply does not apply to the interstate field. This clearly appears from the cases already cited, and also in the case of *Ex parte Buder*, 271 U. S. 461, where this court said (466):

> "The claim that the tax is void rests, not upon a contention that the state statute under which it was laid is unconstitutional, but upon a contention that the statute is no longer in force."

B. The Order of the Commission in Assuming Jurisdiction Did Not Affect "Rates Chargeable by a Public Utility."

In the first place, the Board of Trade is not and is not asserted to be a public utility. In the second place, no service charges of the Board of Trade are involved. Regulation 1620 does not involve any fees or service charges of the Board of Trade. The regulation simply states the maximum rates chargeable by a warehouse, either a state or federal, if it is to be declared regular by the Board of Trade.

C. The Order of the Commission Plainly Interferes With Interstate Commerce.

The Commodity Exchange Act is an exercise of the power of Congress over interstate commerce. The Commodity Exchange Act has been approved as legislation

affecting instrumentalities engaged in interstate commerce. The Board of Trade is such an instrumentality. Action by the Commission, therefore, with respect to the conduct of the Board of Trade involves interstate commerce.

The Commission, wrongly interpreting Sec. 194b, assumed jurisdiction of the rules and regulations of the Board of Trade governing "its maintenance as a commercial grain exchange" by denying the Board of Trade's motion to dismiss the Rice complaint. The assumption of jurisdiction by the Commission interferes with the administration of the Board of Trade under the Commodity Exchange Act.

The bill of complaint in the District Court alleges that the proceedings before the Commission will necessarily and unavoidably interfere with interstate commerce; that the granting of any part or portion of the relief prayed for will interfere with interstate commerce; that the granting of any part or portion of the relief prayed for will surely conflict with the Commodity Exchange Act; that the order denying the motion to dismiss in and of itself interfered with interstate commerce.

In *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U. S. 456 (469-470) this Court said:

> "The Johnson Act of May 14, 1934, 48 Stat. 775, 28 U. S. C. § 41 (1), is inapplicable here because the orders of the state Commission 'interfere with interstate commerce' to the extent that they constitute an attempt to regulate matters in interstate commerce which Congress has lodged exclusively with the Federal Power Commission."

Because of the foregoing, we submit that the Johnson Act has no application.

D. It Was Not Necessary for the Board of Trade to Exhaust State Remedies, by Appeals or Writs of Error Through the Courts of Illinois.

It is argued by the Attorney General (Com. Pet., p. 15) that the Johnson Act inhibits a federal injunction in this case because there was "a plain, speedy and efficient remedy" to be "had at law or in equity in the courts" of the State of Illinois. In other words, the Attorney General now contends there can be no relief in the federal courts unless the party has pursued his rights throughout the state reviewing courts.

If the Attorney General is correct in this contention, there would never be any reason for seeking an injunction in the federal courts against the usurpation of power by state authorities: the party would be required to litigate his rights to the highest court of the state from which there would be direct review by this Court. In brief, the Attorney General wishes to outlaw federal injunctions against state usurpations of authority.

It is obvious that District Courts will issue injunctions when state administrative bodies are infringing upon the fields occupied by the federal government. In *Lane* v. *Wilson*, 307 U. S. 268, the court said (274-275):

> "The other preliminary objection to the maintenance of this action is likewise untenable. To vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the state courts. Normally, the state legislative process, sometimes exercised through administrative powers conferred on state courts, must be completed before resort to the federal courts can be had. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. But the state procedure open for one in the plaintiff's situation (§ 5654) has all the indicia of a conventional judicial proceeding and does not confer upon the Oklahoma courts any of the discretionary or initiatory functions

that are characteristic of administrative agencies. See Section 1 of Article IV of the Oklahoma Constitution; *Oklahoma Cotton Ginners' Assn.* v. *State*, 174 Okla. 243; 51 P. 2d 327. Barring only exceptional circumstances, see *e.g. Gilchrist* v. *Interborough Rapid Transit Co.*, 279 U. S. 159, or explicit statutory requirements, *e.g.* 48 Stat. 775; 50 Stat. 738; 28 U. S. C. § 41 (1), resort to a federal court may be had without first exhausting the judicial remedies of state courts. *Bacon* v. *Rutland R. Co.*, 232 U. S. 134; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U. S. 196."

Conclusion.

The construction placed upon Section 194b by the Commission would enable the Commission to control the delivery of warehouse receipts in satisfaction of futures contracts. Such control by the Commission is coincident with or repugnant to the control over contract markets exercised by the Federal Government in and by the Commodity Exchange Act; or, more narrowly, to the control exercised by the Federal Government over futures contracts and the delivery of grain in satisfaction of futures contracts. The dismissal of the Board of Trade from the Rice case is the only order which the Commission could have entered without encroachment upon the federal field.

That the decision of the Circuit Court of Appeals should be affirmed, it is

Respectfully submitted,

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February 6, 1947.

APPENDIX.

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE UNDER THE COMMODITY EXCHANGE ACT, AS AMENDED.*

PART 1—GENERAL PROVISIONS.

DEFINITIONS.

Section 1.1 Words in singular and plural form. Words used in the singular form in these rules and regulations shall be deemed to import the plural, and vice versa, as the case may require.

Sec. 1.2 Liability of principal for act of agent. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust, within the scope of his employment or office, shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person.

Sec. 1.3. Definitions. The following terms, as used in the Commodity Exchange Act or in these rules and regulations, shall have the meanings hereby assigned to them, unless the context otherwise requires:

(*a*) *Board of trade.*—This term means any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment.

(*b*) *Business day.*—This term means any day other than a Sunday or holiday. In all notices required by the act

* Regulations as to grain, only, are included herein.

or by these rules and regulations to be given in terms of business days the rule for computing time shall be to exclude the day on which notice is given and include the day on which shall take place the act of which notice is given.

(*c*) *Clearing member.*—This term means any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a contract market.

(*d*) *Clearing organization.*—This term means the person or organization which acts as a medium for clearing transactions in commodities for future delivery, or for effective settlements of contracts for future delivery, for and between members of any board of trade.

(*e*) *Commodity.*[3]—This term means and includes wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, millfeeds, butter, eggs, Irish potatoes, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, and soybean meal.

(*f*) *Commodity Exchange Act; the act.*[3]—These terms mean the Commodity Exchange Act, as amended by the act of Congress, approved April 7, 1938 (7 U. S. C. and Sup. V, secs. 1-17a), and as further amended by the act of Congress, approved October 9, 1940 (Public Law No. 818, 76th Cong.).

(*g*) *Administration.*[4]—This term means the Food Distribution Administration of the United States Department of Agriculture.

(*h*) *Contract market.*—This term means a board of

3. As amended April 18, 1938; and October 30, 1940, effective December 8, 1940.

4. As amended February 15, 1943.

trade designated by the Secretary of Agriculture as a contract market under the Commodity Exchange Act.

(*i*) *Contract of sale.*—This term includes sales, purchases, agreements of sale or purchase, and agreements to sell or purchase.

(*j*) *Controlled account.*—An account shall be deemed to be controlled by a person if such person by power of attorney or otherwise actually directs trading for such account.

(*k*) *Customer; commodity customer.*—These terms have the same meaning and refer to a customer trading in any commodity named in the definition of commodity herein.

(*l*) *Delivery month.*—This term means the month of delivery specified in a contract of sale of any commodity for future delivery.

(*m*) *Executing for others.*—This term as used in the definition of floor broker means executing by any person of orders, including his own, for the purchase or sale of any commodity for future delivery in the name of, or for the account of, more than one principal (clearing member).

(*n*) *Floor broker.*—This term means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall engage in executing for others any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market, and who for such services receives or accepts any commission or other compensation.

(*o*) *Future delivery.*—This term does not include any sale of a cash commodity for deferred shipment or delivery.

(*p*) *Futures commission merchant.*—This term means individuals, associations, partnerships, corporations, and

trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(*q*) *Member of a contract market.*—This term means and includes individuals, associations, partnerships, corporations, and trusts owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon.

(*r*) *Net equity.*—This term means the credit balance which would be obtained by combining the commodity margin balance of any person with the net profit or loss, if any, accruing on the open trades or contracts of such person.

(*s*) *Net deficit.*—This term means the debit balance which would be obtained by combining the commodity margin balance of any person with the net profit or loss, if any, accruing on the open trades or contracts of such person.

(*t*) *Open contracts.*—This term means contracts of purchase or sale of any commodity made by or for any person on or subject to the rules of a board of trade for future delivery during a specified month or delivery period which have not been fulfilled by delivery nor offset by other contracts of sale or purchase in the same commodity and delivery month.

(*u*) *Person.*—This includes individuals, associations, partnerships, corporations, and trusts.

(*v*) *Director.*[5]—This term means the Director of Food

5. Promulgated February 15, 1943.

Distribution of the United States Department of Agriculture or any officer or employee of the Administration to whom the Director has heretofore lawfully delegated, or to whom the Director may hereafter lawfully delegate, the authority to act in his stead.

Administration.

SEC. 1.4[6] Duties to be performed by Director. The Director shall perform for and under the supervision of the Secretary of Agriculture such duties as the Secretary may require in enforcing the provisions of the act and of the rules and regulations promulgated thereunder.

SEC. 1.5[7] Information confidential; disclosures to contract-market committees and officials. No officer or employee of the Department of Agriculture shall publish, divulge, or make known in any manner, except insofar as may be required in the performance of his official duties or by a court of competent jurisdiction, any facts or information regarding the business of any person which may come to the knowledge of such officer or employee through any inspection or examination of the reports or records of, or through any information given by, any person pursuant to the Commodity Exchange Act or these rules and regulations: *Provided, however,* That this prohibition shall not apply to disclosures made in good faith to the Business Conduct Committee or other proper committee or official of a contract market of matters in respect to which such contract market has responsibility or duty under the Commodity Exchange Act, or which, in the judgment of the Director, adversely affect such market or are prejudicial to the interests of producers or consumers.

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6. As amended April 8, 1942, and February 15, 1943.

7. As amended August 29, 1941, April 8, 1942, April 21, 1942, and February 15, 1943.

SEC. 1.6 Speculation in commodities by officers and employees prohibited. No officer or employee of the Department of Agriculture engaged in the administration or enforcement of the Commodity Exchange Act, or having access to any confidential information obtained under authority of the act, shall have any interest directly or indirectly in any speculative transaction in any commodity for future delivery.

Registration of Futures Commission Merchants and Floor Brokers.

SEC. 1.7[8] Registration required of futures commission merchants. No person shall engage as futures commission merchant in the solicitation or acceptance of orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market, unless such person shall have secured a certificate of registration as futures commission merchant under the Commodity Exchange Act issued by the Secretary of Agriculture and countersigned by the Director and such registration shall not have expired, been suspended, or been revoked. Such registration shall be required of every person engaged as herein described irrespective of whether accounting records relating to such orders and trades and contracts resulting therefrom are maintained by other futures commission merchants to whom such orders are transmitted for execution or clearance.

SEC. 1.8[9] Registration required of floor brokers. No person shall act as floor broker in executing any orders for the purchase or sale of any commodity for future de-

8. As amended November 19, 1938, effective January 1, 1939; April 8, 1942, and February 15, 1943.

9. As amended April 8, 1942, and February 15, 1943.

livery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person shall have secured a certificate of registration as floor broker under the Commodity Exchange Act issued by the Secretary of Agriculture and countersigned by the Director and such registration shall not have expired, been suspended, or been revoked.

SEC. 1.9 Registration as floor broker not included in registration as futures commission merchant and vice versa. Registration as futures commission merchant shall not include registration as floor broker nor shall registration as floor broker include registration as futures commission merchant.

SEC. 1.10[10] Applications for registration required on prescribed forms; financial statements of futures commission merchants; registration suspended or revoked for willful misrepresentation. Application for registration as futures commission merchant shall be made on Form 1–R. Application for registration as floor broker shall be made on Form 2–R. Application forms may be obtained from the Administration, United States Department of Agriculture, Washington, D. C., or from any field office of the Compliance Branch thereof. Each application shall be executed and filed in accordance with the instructions appearing on the prescribed form.

Every application for registration as futures commission merchant other than an application necessitated solely by reason of a change in the name of the registrant shall be accompanied by a supplemental statement on Form 1–RF, showing the financial condition of the applicant as of a date not more than 6 months prior to the date of filing

10. As amended November 20, 1937, August 12, 1941, April 8, 1942, April 21, 1942, June 24, 1942, and February 15, 1943.

application: *Provided*, That the latest statement of financial condition submitted by the applicant to any commodity or securities exchange of which applicant is a member which includes substantially the same information concerning applicant's financial condition as that required on Form 1-RF, as of a date not more than 6 months prior to the filing of application, may be filed with the application in lieu of statement on Form 1-RF; *Provided further*, That in exceptional instances, upon good cause shown, the Director may extend, for not to exceed 60 days, the time for the filing of the applicant's financial statement.

Every statement on Form 1-RF and every statement filed in lieu thereof shall bear the verification of the applicant in the following form, to wit:

> Applicant represents that all information contained or incorporated in this financial statement is true to the best of applicant's knowledge and belief.
>
> Dated at ....., the ..... day of ....., 19.....

If the applicant is a partnership, the financial statement shall be signed in the name of the partnership by a general partner and the signature witnessed. If the applicant is a sole proprietorship, the financial statement shall be signed by the proprietor and the signature witnessed. If the applicant is a corporation or other form of organization, the financial statement shall be signed in the name of the corporation or other organization by the president, vice president, or other principal officer, attested and the seal affixed by the secretary or other authorized officer.

Willful misrepresentation or concealment by the applicant (or registrant) of any material fact in an application for registration or in any statement supplemental thereto shall constitute cause for the suspension or revocation of registration.

Sec. 1.11[11] Registration fee; form of remittance. Each application for registration, or renewal thereof, shall be accompanied by a registration (or renewal) fee of ten dollars ($10), in the form of a money order, bank draft, or certified check, payable to the Treasurer of the United States, and the application and fee shall be forwarded to the Administration, Department of Agriculture, Washington, D. C.

Sec. 1.12[12] Posting of registration certificate; fee for duplicate. Every person registered as futures commission merchant under the act shall—

(a) post in a conspicuous place in each office in the United States maintained by such person in which orders for the purchase or sale of any commodity for future delivery are solicited or accepted, the original or a duplicate (issued by the Secretary of Agriculture) of such registrant's registration certificate as futures commission merchant; and

(b) post in a conspicuous place in each office in the United States in which orders for the purchase or sale of any commodity for future delivery are solicited or accepted *for, and in the name of,* such registrant, a duplicate (issued by the Secretary of Agriculture) of such registrant's registration certificate as futures commission merchant.

Duplicates of registration certificates may be procured on request on payment of two dollars ($2) for each duplicate. Remittances in payment of duplicates shall be made payable to the Treasurer of the United States. The word "DUPLICATE" in conspicuous letters shall appear on the face of each duplicate.

Sec. 1.13[13] Deposit of registration fee; fee not subject

11. As amended May 4, 1938 and April 8, 1942.
12. As amended November 19, 1938, effective January 1, 1939.
13. As amended April 8, 1942, and February 15, 1943.

to refund after registration; form of certificate. Upon receipt of an application for registration (or renewal thereof) the Secretary of Agriculture will, if the application be approved, issue a certificate of registration certifying that the registrant has registered under the act as futures commission merchant or as floor broker. The registration fee (including the fee for duplicate copies of the certificate of registration, if any) so tendered, shall be deposited in a special deposit account until the registration is finally issued or denied. If registration be denied, the fee shall be returned to the applicant, but if issued the fee shall be deposited in the Treasury of the United States as a miscellaneous receipt and will not thereafter be subject to refund. Each registration certificate shall bear a serial number, the signature of the Secretary of Agriculture, be issued under the seal of the United States Department of Agriculture, and be countersigned by the Director.

Sec. 1.14[14] Changes to be reported by futures commission merchants and floor brokers. The registrant shall file with the Administration a statement on Form 3-R setting forth any change which renders no longer accurate and current the information contained in any of the following enumerated items of the registrant's application for registration (or any statement supplemental thereto):

With respect to a futures commission merchant: Item 2 (address of principal office), item 3 (concerning general books and records), item 4 (form of organization), item 9 (addresses of branch offices and names of managers thereof, and location of branch offices in which there is maintained a separate and complete set of financial records of commodity customers' accounts), item 10 (agents authorized to solicit or accept

14. As amended November 19, 1938, effective January 1, 1939; and April 8, 1942.

commodity futures orders for, and in the name of, the registrant), and item 14 (refusal of, or suspension or expulsion from, commodity-exchange membership). Any change in the personnel of a partnership resulting from the death, withdrawal, or addition of a partner which, as a matter of law, does not create a new partnership may be reported on Form 3-R, as provided in section 1.15 hereof.

With respect to a floor broker: Item 2 (a) (business address), item 9 (names and addresses of clearing members through whom registrant clears commodity futures transactions for his own account), and item 11 (refusal of, or suspension or expulsion from commodity-exchange membership).

Upon discontinuing business as futures commission merchant or as floor broker the registrant shall immediately notify the Administration on Form 3-R.

All statements on Form 3-R shall be prepared and filed in accordance with the instructions appearing thereon.

Sec. 1.15[15] Changes requiring new registration. A new registration shall be required in the event of a change—

(a) in the name of the registrant;

(b) in the form of organization of the registrant;

(c) in the ownership of the business of the registrant in the case of a sole proprietorship; and

(d) in the personnel of a partnership resulting from the death, withdrawal, or addition of a partner: *Provided*, That if such change does not, as a matter of law, create a new partnership, it may be reported by the registrant to the Administration on Form 3-R within 10 days of the date of such change, and if so reported a new registration shall not be required.

Sec. 1.16 Registrations expire December 31 of each year. All registrations shall automatically terminate at

15. As amended November 20, 1937, effective January 1, 1938; and April 8, 1942.

midnight on December 31 of the year for which issued, unless sooner suspended or revoked in accordance with the provisions of the act and the rules and regulations thereunder.

Reports.

Sec. 1.17 Futures commission merchants to report annually on Form 150. [Revoked, June 3, 1942.]

Sec. 1.18[16] Futures commission merchants, on call, to report on Form 160. Each futures commission merchant shall, upon call from the Administration, report on Form 160. Such report shall be prepared in accordance with the instructions appearing on Form 160 and shall be filed with the Administration, United States Department of Agriculture, Washington, D. C., not later than the third business day following the date specified in the call. Reports received by mail will be considered duly filed if postmarked not later than midnight of such third business day.

Such report shall show as of the close of business on the day named in the call:

(a) the total amount of money and credits held or carried by such futures commission merchant for the account of his commodity customers, including margin moneys and moneys and credits resulting from the closed trades and contracts and accruing in connection with the open trades and contracts of such customers; and

(b) the total amount of money segregated and set apart for the benefit of commodity customers—

(1) on hand,

(2) on deposit in banks,

(3) pledged as margin with clearing organizations of contract markets,

(4) pledged as margin with members of contract markets,

16. As amended April 8, 1942.

(5) invested in securities described in section 4d (2) of the Commodity Exchanges Act, and

(6) loaned on security of warehouse receipts in accordance with the rules and regulations of the Secretary of Agriculture.

Sec. 1.19[16] Futures commission merchants, on call, to report names of persons exercising trading control over customers' accounts. Each futures commission merchant shall, upon call, file with the Administration a list of all persons who, by power of attorney or otherwise, exercise trading control over any account or accounts of any customer of such futures commission merchant with respect to contracts for the future delivery of any commodity on or subject to the rules of any contract market.

Sec. 1.19a[17] Contract-market members to report uncleared transactions ("pass-outs") on Form 110. Each member of a contract market who shall execute uncleared transactions (commonly known as "pass-outs") in any commodity for future delivery on or subject to the rules of such contract market shall report to the Administration on Form 110 applicable to such contract market each business day on which he shall execute such uncleared transactions. Such report shall be prepared and filed in accordance with the instructions appearing on Form 110, to be obtained from the Administration, and shall show accurately and fully the details of each such transaction, including the commodity, future, quantity, and price, and the name of the person from whom bought and to whom sold: *Provided*, That the requirements of this section shall not apply to any member of a contract market, all of whose uncleared transactions are recorded on the books and records of, and included in the purchases and sales reported to the Administration by, a clearing member (or clearing members) of such contract market.

16. As amended April 8, 1942.

17. Promulgated September 5, 1941, effective September 15, 1941; amended November 27, 1941 and April 8, 1942.

Customers' Funds

Sec. 1.20 Customers' funds to be segregated and separately accounted for. All money received by a futures commission merchant to margin, guarantee, or secure the trades or contracts of commodity customers and all money accruing to such customers as the result of such trades or contracts shall be separately accounted for and be segregated as belonging to such customers. Such funds, when deposited with any bank or trust company, shall be deposited under an account name which will clearly show that they are customers' funds segregated as required by the Commodity Exchange Act, and under a written agreement with such bank or trust company waiving any claim, lien, or right of set-off of any nature which such bank or trust company might otherwise have or obtain against such funds. An executed copy of such agreement shall be kept as a permanent record by the futures commission merchant. If such funds are deposited with a clearing organization of a contract market, they shall be deposited under an account name which will clearly show that they are customers' funds segregated as required by the Commodity Exchange Act. Under no circumstances shall any portion of commodity customers' funds be obligated to the clearing organization of a contract market, or to any member of a contract market, except to margin, guarantee, secure, transfer, adjust, or settle trades and contracts made in behalf of such commodity customers.

Sec. 1.21 Care of money and equities accruing to customer. All money received directly or indirectly by, and all money and equities accruing to, a futures commission merchant from any clearing organization of any contract market, or from any member thereof or from any member of a contract market, incident to or resulting from any

trade or contract in commodity futures made by or through such futures commission merchant in behalf of any customer shall be considered as accruing to such customer within the meaning of section 4d (2) of the Commodity Exchange Act. Such money and equities shall be treated and dealt with as belonging to such customer in accordance with the provisions of the act. Money and equities accruing in connection with customers' open trades or contracts need not be separately credited to individual customers' accounts but may be treated and dealt with as belonging undivided to all customers having open trades or contracts which if closed at the settling price as fixed by the clearing organization would result in a credit to such customers.

Sec. 1.22 Use of money, securities, or property of customers restricted. No futures commission merchant shall use, or permit the use of, the money, securities, or property of one customer to margin or settle the trades or contracts, or to secure or extend the credit, of any person other than such customer. The net equity of one customer shall not be used to carry the trades or contracts or to offset the net deficit of any other customer or person or to carry the trades or offset the net deficit of the same customer in goods or property not included in the term "commodity" as defined herein.

Sec. 1.23 Interest of futures commission merchant in segregated funds, additions and withdrawals. The prohibition in section 4d (2) of the Commodity Exchange Act against commingling customers' funds with the funds of a futures commission merchant shall not be construed to prevent such futures commission merchant from having a residual financial interest in the funds segregated and set apart for the benefit of commodity customers, nor shall such prohibition be construed to prevent a futures commission merchant from adding to customers' segregated

funds from his own funds such amount or amounts of money as he may deem necessary to insure any and all customers' accounts from becoming undermargined at any time: *Provided, however,* That the books and records of such futures commission merchant shall at all times accurately reflect his interest in customers' segregated funds. Such futures commission merchant may draw upon such segregated funds to his own order to the extent of his actual interest therein: *Provided,* That such withdrawal shall not result in the money, securities, property, or equity of one customer being used to margin or carry the trades or contracts, or extend the credit, of any other customer or person.

Sec. 1.24 Segregated funds; exclusions therefrom. Money held in segregated account by a futures commission merchant shall not include: (a) money invested in obligations or stocks of any clearing organization, or in memberships in or obligations of any contract market; or (b) money held by any clearing organization of any contract market which may be used by such clearing organization for any purpose other than to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of the commodity customers of such futures commission merchant.

Sec. 1.25 Investment and lending of customers' money; conditions governing. Any futures commission merchant may, in accordance with the provisions of section 4d (2) of the Commodity Exchange Act,

(a) invest customers' money in obligations or investment securities as described in said section; and

(b) loan customers' money to other persons on the security of negotiable warehouse receipts conveying or securing title to readily marketable commodities, subject to the following conditions:

(1) that such warehouse receipts be issued by a public warehouseman other than such futures com-

mission merchant, licensed as warehouseman under the provisions of the United States Warehouse Act or the warehouse laws of any State; and

(2) the amount of any loan so made shall at no time exceed 85 percent of the current market value of the commodities represented by such warehouse receipts.

Sec. 1.26[18] Deposit of investment securities, obligations, and warehouse receipts. Each futures commission merchant who, in accordance with section 4d (2) of the act and with these rules and regulations, invests money belonging or accruing to customers in obligations or investment securities described in said section, or loans such money on the security of negotiable warehouse receipts, shall promptly—

(a) Deposit such obligations, securities, and warehouse receipts in safekeeping with a bank or trust company under an account name which will clearly show that they represent investments of, or security for loans of, customers' funds segregated as required by the Commodity Exchange Act, and under a written agreement with such bank or trust company waiving any claim, lien, or right of set-off of any nature which such bank or trust company might otherwise have or obtain against such obligations, securities, and warehouse receipts, and authorizing inspection thereof at any reasonable time by representatives of the Administration; or

(b) Deposit such obligations, securities, and warehouse receipts with a clearing organization of a contract market under an account name which will clearly show that they represent investments of, or security for loans of, customers' funds segregated as required by the Commodity Exchange Act, and under a written agreement with such clearing organization providing that such obligations, securities, and warehouse receipts are deposited solely to margin, guarantee, se-

18. As amended November 13, 1942.

cure, transfer, adjust, or settle the contracts or trades of the commodity customers of such futures commission merchant and waiving any other claim, lien, or right of set-off of any nature which such clearing organization might otherwise have or obtain against such obligations, securities and warehouse receipts. Such agreement shall authorize the inspection at any reasonable time by representatives of the Administration of such obligations, securities, and warehouse receipts.

An executed copy of the agreement prescribed herein shall be kept as a permanent record by the futures commission merchant.

Sec. 1.27 Permanent record of investments and loans. Each futures commission merchant who, in accordance with section 4d (2) of the act and with these rules and regulations, invests money belonging or accruing to customers in obligations or investment securities described in said section, or loans such money on the security of negotiable warehouse receipts, shall keep a permanent record showing the following:

(a) with respect to obligations and investments securities,

(1) the date on which such investments were made,

(2) the name of the person from or through whom such obligations or securities were bought,

(3) the amount of money paid for such obligations or securities,

(4) a description of such obligations or securities,

(5) the date on which disposition was made of such obligations or securities and the amount of money received therefor, and

(6) the name of the person to or through whom such obligations or securities were sold; and

(b) with respect to warehouse receipts,

(1) the date on which such loans were made,

(2) the name of the person to whom such funds were loaned,

(3) the amount loaned on the security of such warehouse receipts,

(4) a description of such warehouse receipts,

(5) the date and particulars of any changes or substitutions in the warehouse receipts held as security for such loans, and

(6) the date on which such loans were repaid.

Sec. 1.28 Appraisal of investment securities and obligations. Futures commission merchants who invest customers' money in obligations or investment securities under the provisions of section 4d (2) of the Commodity Exchange Act shall include such obligations or investment securities in segregated account at values which at no time shall be greater than current market value, determined as of the close of the market on the last preceding market day, less the cost of disposal.

Sec. 1.29[19] Increment or interest resulting from investment or lending of customers' funds. The investment and lending of customers' funds in accordance with the provisions of section 4d (2) of the Commodity Exchange Act and these rules and regulations and the deposit, in accordance with the provisions of section 1.26, of obligations, investments securities, and warehouse receipts, shall not operate to prevent the depositor from receiving and retaining as his own any increment or interest resulting therefrom.

Sec. 1.30 Loans by futures commission merchants; treatment of proceeds. Nothing contained in these rules and regulations shall be construed to prevent a futures commission merchant from lending his own funds to commodity customers on securities and property pledged by such customers, or from repledging or selling such securities

19. As amended November 13, 1942.

and property pursuant to specific written agreement with such customers: *Provided, however,* That the proceeds of such loans used to margin, guarantee, or secure the trades or contracts of such customers in any commodity for future delivery shall be treated and dealt with by such futures commission merchant as belonging to such customers, in accordance with and subject to the provisions of section 4d (2) of the Commodity Exchange Act.

RECORD KEEPING

Sec. 1.31 Books and records; keeping and inspection. All books and records required to be kept by the act or by these rules and regulations shall be kept for a period of 5 years from the date thereof and during the first 2 years of such period shall be readily accessible. All such books and records shall be open to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice.

Sec. 1.31a[20] Compliance with sections 1.32-1.36. With respect to a futures commission merchant who transmits all customers' commodity futures orders, together with all money, securities, and property received to margin, guarantee, or clear the trades or contracts of such customers, to another futures commission merchant for execution or clearance, and the latter renders confirmations and statements of purchase and sale, and transmits remittances, direct to such customers, the requirements of section 1.32 to 1.36, inclusive, of these rules and regulations shall be deemed to be complied with if the books and records described in the aforesaid sections are prepared and kept, in the form and manner therein set forth, by either the futures commission merchant transmitting such orders or by the futures commission merchant to whom such orders are transmitted.

20. Promulgated November 19, 1938, effective January 1, 1939.

Sec. 1.32 Segregated account; daily computation and permanent record. The amount of money, securities, and property which must be in segregated account in order to comply with the requirements of section 4d (2) of the Commodity Exchange Act shall be computed by each futures commission merchant as of the close of the market each business day, based upon his accounting records. Such computation shall be made as promptly as possible and in any event not later than the next succeeding business day. A permanent record of such computation shall be made and kept in readily accessible form, together with all supporting data.

Sec. 1.33 Permanent record of customer's position in each future. Each futures commission merchant shall prepare and keep as a permanent record a statement which shows the position of each customer in each future of each commodity on each contract market as of the close of the last business day of each calendar month. Such statement may be prepared separately or may be combined with the statement required by section 1.34 hereof.

Sec. 1.34[21] Monthly record, "point balance"; semiannual record for each customer; information on call. Each futures commission merchant shall prepare and keep as a permanent record a statement, commonly known as a "point balance", which accrues or brings to the official closing price, or settlement price fixed by the clearing organization, all open trades or contracts of customers as of the last business day of each calendar month. Each futures commission merchant shall also prepare and keep as a permanent record a statement which shall show, as of the close of the last business day of his fiscal year and semiannually thereafter, (a) the net profit or loss (equity or deficit), based upon the closing price or settlement price

21. As amended April 8, 1942.

fixed by the clearing organization, accruing to each customer from the combined open trades or contracts of such customer, (b) the credit or debit balance of the commodity margin account of each customer, whether or not such customer has any trades or contracts open, and (c) a description of all securities and property in segregated account received from each customer to margin, guarantee, or secure the trades or contracts of such customer: *Provided*, That, upon call, a statement shall be prepared setting forth the information described in (a), (b), and (c) hereof, as of the close of the calendar month specified in the call: *Provided further*, That such statement when made upon call may, with the approval of the Administration, be substituted for, and used in lieu of, the next succeeding semiannual statement which would otherwise be required by the provisions of this section.

Sec. 1.35[21] Records of cash commodity and futures transactions. Each futures commission merchant and each member of a contract market shall keep full and complete records of all commodity futures transactions and cash commodity transactions, made by or through him, on or subject to the rules of a board of trade. Such records shall be kept systematically and in such manner as to be readily accessible. He shall keep such records, including all orders, trading cards, signature cards, street books, journals, ledgers, cancelled checks, copies of confirmations and copies of statements of purchase and sale, together with all other data and memoranda, and records of every sort pertaining to transactions in cash commodities and in commodities for future delivery, for a period of 5 years from the date thereof. He shall produce the same for inspection and shall furnish true and correct information and reports as to the contents or the meaning thereof,

21. As amended April 8, 1942

when and as requested by any authorized representative of the Administration.

Sec. 1.36 Record of securities and property received from customers. Each futures commission merchant shall keep, in permanent and readily accessible form, a record of all securities and property (other than money) received from customers in lieu of money to margin, guarantee, or secure the commodity trades and contracts of such customers. Such record shall include a description of the securities and property received from each customer, the name and address of such customer, the dates when such securities and property were received from and when returned to such customer, or otherwise disposed of, together with the facts and circumstances of such other disposition.

Sec. 1.37[22] Customer's name, address, and occupation recorded; record of guarantor or controller of account. Each futures commission merchant and each member of a contract market shall keep a record in permanent form which shall show for each commodity futures account carried by him the true name and address of the person for whom such account is carried and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. Such record shall be open to inspection by any authorized representative of the Administration.

Sec. 1.38 "Transfer" or "office" trades, exchanges of futures; identification of and restrictions upon. Each member of a contract market, each futures commission merchant and each floor broker handling or executing trades or transactions known as transfer trades or office trades, or which involve the exchange of futures for cash commodities or the exchange of futures in connection with

22. As amended April 8, 1942.

cash commodity transactions, shall identify and mark by appropriate symbol or designation all such transactions and all records and memoranda pertaining thereto. No transaction or trade shall be considered to be a transfer trade or office trade or an exchange of futures for cash commodities or an exchange of futures in connection with cash commodities unless made in accordance with the written rules of a board of trade applying to such trades and transactions and such rules have not been disapproved by the Secretary of Agriculture.

[Sec. 1.39, Execution of Orders, amended and omitted.]

MISCELLANEOUS

Sec. 1.40[23] Crop, market information letters, reports; copies required. Each futures commission merchant and each member of a contract market shall, upon request, furnish or cause to be furnished to the Administration a true copy of any letter, circular, telegram, or report published or given general circulation by such futures commission merchant or member which concerns crop or market information or conditions that affect or tend to affect the price of any commodity, and the true source of or authority for the information contained therein.

Sec. 1.41[23a] Contract market rules, regulations; filing of copies. Each contract market shall promptly furnish to the Administration copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof, or by any committee or clearing organization thereof, and of all changes and proposed changes therein, and shall notify the Administration promptly of all changes in its membership. Three copies of all such material shall be furnished to the Director.

23. As amended April 8, 1942.

23a. As amended April 8, 1942, and February 15, 1943.

United States Department of Agriculture, Washington, D. C., and one copy shall be furnished to the supervisor in charge of the field office of the Compliance Branch of the Administration having local jurisdiction with respect to such contract market.

Sec. 1.42[24] Delivery notice; filing of copy. Each contract market shall furnish or cause to be furnished promptly to the Administration a copy of each notice of delivery issued by any member thereof covering the delivery of any commodity on a futures contract made on or subject to the rules of such contract market, and shall also furnish or cause to be furnished promptly to the Administration a record of all endorsements of the original notice of delivery shown in the order in which such endorsements were made.

Sec. 1.43[24] Information required concerning warehouses. Each contract market shall file with the Administration a list of all warehouses in which or out of which commodities are deliverable in satisfaction of futures contracts made on or subject to the rules of such contract market, which list shall show the name, location, and storage capacity of each such warehouse, together with the name and business address of the operator thereof. Such list shall be accompanied by a schedule of the storage charges, handling charges, and the annual fire insurance rate applicable to each such warehouse. The Administration shall be kept currently advised of all changes affecting such information.

Sec. 1.44[24] Warehouse records, reports; visitation of premises. Each contract market shall require the operators of warehouses whose receipts are deliverable in satisfaction of commodity futures contracts made on or subject to the rules of such contract market—

24. As amended April 8, 1942.

(a) to keep records showing the stocks of each commodity traded in for future delivery on such contract market, in store in such warehouses by kinds, by classes, and by grades, if stored under conditions requiring such designation or identification, and including also lots and parcels stored specially or separately or in specially leased warehouse space;

(b) upon call from the Administration, to report the stocks of commodities in such warehouses and to furnish information concerning stocks of each commodity traded in for future delivery on such contract market about to be transferred or in process of being transferred, or otherwise moved into or out of such warehouses, as well as any other information concerning commodities stored in such warehouses and which are or may be available for delivery on futures contracts; and

(c) to permit visitation of the premises and inspection of the books and records of such warehouses by duly authorized representatives of the United States Department of Agriculture or the Department of Justice, and to keep all books, records, papers, and memoranda relating to the storage and warehousing of commodities in such warehouses for a period of 5 years from the date thereof.

Sec. 1.45[25] Delivery of commodities conforming to United States standards. Each contract market shall require that all contracts of sale of any commodity for future delivery on or subject to the rules of such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards if such standards shall have been officially promulgated. In the event of a change in United States standards, all contracts made on and after the effective date of such change shall be made on the basis of the standards as changed: *Provided*, That this shall not be construed to prevent the closing of trades made prior to the effective date of such change.

25. As amended June 2, 1941.

PART 2.—SPECIAL PROVISIONS APPLICABLE TO GRAINS, FLAXSEED AND SOYBEANS[1]

REPORTING REQUIREMENTS

Section 2.00[2] **Definition; "grain."** The word "grain" as used in part 2 of these rules and regulations shall mean and include wheat, corn, oats, barley, rye, rice, flaxseed, grain sorghums, and soybeans.

Form 200

Sec. 2.01[3] Daily reports on Form 200 by clearing members; information shown. Each *clearing member* of each contract market shall report to the Administration each business day on Form 200 applicable to such contract market. Such report shall be prepared in accordance with the instructions appearing on Form 200, to be obtained from the Administration, and shall show accurately and fully the information called for with respect to all contracts of sale of grain for future delivery to which such clearing member is a party either as buyer or seller, made on or subject to the rules of the contract market covered by the report. Persons who are clearing members of more than one contract market shall report separately with respect to each such market. Such report shall show separately for each kind of grain and each delivery month:

(a) the total of all open accounts "long" and the total of all open accounts "short" carried by such clearing member, at the beginning and at the end of the period covered by the report, including his own accounts as well as the accounts of other persons;

1. Part 2 promulgated July 14, 1937, effective August 2, 1937; amended November 23, 1940, April 5, 1941, April 7, 1941, April 8, 1942, May 9, 1942, and February 15, 1943.

2. As amended November 23, 1940, effective December 8, 1940.

3. As amended April 8, 1942, and February 15, 1943.

(b) the net position of such clearing member in respect to all accounts and contracts open on his books at the end of the period covered by the report;

(c) the quantity of grain bought and the quantity of grain sold on such contracts during the period covered by the report;

(d) the quantity of grain delivered and the quantity of grain received on such contracts during the period covered by the report; and

(e) the quantity of grain represented by delivery notices passed back to the clearing organization or passed on to other clearing members.

Sec. 2.02[3] Time and place of filing reports on Form 200. Unless otherwise authorized in writing by the Administration upon good cause shown, reports required to be made on Form 200 shall be filed in the office of the Compliance Branch of the Administration in the city where the contract market covered by the report is located, as soon as possible after the close of the market on each business day and not later than 30 minutes before the official opening of the market on the next following business day. If there be no office of the Compliance Branch of the Administration in such city, the reports shall be transmitted in accordance with instructions furnished by the Administration.

Sec. 2.03 Errors or omissions in reports on Form 200. Reports on Form 200 shall be prepared with care, and if any error or omission is discovered in any report a memorandum thereof shall be furnished as soon as possible. Minor corrections may be shown in the next succeeding report.

Forms 201 and 202

Sec. 2.04[4] "Special accounts" reported on Form 201. Each *futures commission merchant* and each *member* of a

3. As amended April 8, 1942, and February 15, 1943.
4. As amended April 8, 1942.

contract market, who shall carry for another person any account in any future of any grain, resulting from any transaction made on or subject to the rules of a contract market, which shall show open contracts in any one future equal to or in excess of the amount specified in section 2.20 hereof, shall report such account daily to the Administration on Form 201 applicable to such contract market. "House accounts" carried by a member of a contract market or by a futures commission merchant shall likewise be reported on Form 201.

For the purpose of reporting on Form 201, all accounts which belong to or are controlled by the same person shall be considered as one account. All accounts required to be reported on Form 201 shall be known as "special accounts" and the report thereon shall show the net position, as of the close of the market on the day covered by the report, of each such account in each future in which there are open contracts equal to or in excess of such specified amount.

Sec. 2.05 Net position of account prior and subsequent to special account status. The report for the first day that a "special account" shows open contracts in any one future equal to or in excess of the amount specified in section 2.20 hereof shall show also the net position of such account in such future as of the close of the market on the last preceding business day. Such account shall also be reported on the first day that the net position thereof in such future falls below such specified amount after having been reported as a "special account."

Sec. 2.06[4a] Time of filing reports on Form 201. Unless otherwise authorized in writing by the Administration upon good cause shown, reports required to be made on Form 201 shall be filed with the Compliance Branch of the Administration not later than 30 minutes before the

4a. As amended April 8, 1942, and February 15, 1943.

official opening of the market on the next following business day: *Provided,* That futures commission merchants and members of contract markets that are not located in a city where the Compliance Branch of the Administration has an office, may transmit such reports by mail, in accordance with instructions furnished by the Administration. Reports received by mail will be considered duly filed if postmarked not later than midnight of the day covered by the report.

Sec. 2.07 [4] Accounts reported on Form 201 shown by account number or code; identification on Form 202. Reports on Form 201 shall be prepared in accordance with the instructions appearing thereon. Each account reported shall be designated by account number or code and when such account number or code appears for the first time on Form 201 it shall be identified on Form 202, and such identification (transmitted in a separate sealed envelope marked "Confidential") shall accompany the report on Form 201. An account number or code once identified on Form 202 shall not thereafter be changed or assigned to any other account without the prior approval of the Administration.

Sec. 2.08 Persons controlling or having participating financial interest in accounts shown on Form 202. If more than one person shall have control over or be known to have a participating financial interest in any account reported on Form 201, the names and addresses of all such persons shall be shown on Form 202.

Sec. 2.09 Character of accounts shown on Form 202. In identifying accounts on Form 202 the person reporting shall indicate the character of such accounts, *i. e.*, whether hedging, spreading, speculative, or commission house.

4. As amended April 8, 1942.

Form 203

Sec. 2.10[5] Persons holding or controlling open contracts of specified size; reports on Form 203. Every *person* who holds or controls open contracts in any *one* future of any grain on any *one* contract market which equal or exceed the amount fixed by the Secretary of Agriculture (in sec. 2.21 hereof) for reporting purposes under section 4i (2) of the Commodity Exchange Act shall report to the Administration on Form 203. Such report shall be made *daily: Provided*, That if on any day such person has no trades or transactions in any future of a grain previously reported and there has been no change in the open contracts of such person in any such grain, the last detailed report of such person shall be considered as his report on open contracts in such grain on all intervening days. Such person shall also make a report on Form 203 covering the day on which the amount of his open contracts in such future falls below the amount fixed in section 2.21 hereof.

Sec. 2.11 Separate reports on Form 203 for each grain; information shown. Separate reports on Form 203 shall be filed covering each grain in which the person reporting has or controls open contracts in any one future which equal or exceed the amount fixed in section 2.21 hereof. Each such report shall show for the day covered thereby, by markets and by futures:

(a) the amount of open contracts held or controlled by such persons in all futures of such grain on all boards of trade in the United States and elsewhere;

(b) the character of the open contracts held or controlled, *i. e.*, whether hedging, spreading, or speculative;

(c) the amount of such grain bought and the amount sold by such person for future delivery on all boards of trade in the United States and elsewhere; and

5. As amended April 8, 1942.

(d) *the amount of such grain delivered by or to* such person in settlement of futures contracts.

For the purposes of subparagraph (b) hereof the term "hedging" shall have the same meaning as the term "bona fide hedging transactions" appearing in paragraph (3) of section 4a of the Commodity Exchange Act.

Sec. 2.12[6] Time of filing reports on Form 203. Unless otherwise authorized in writing by the Administration upon good cause shown, reports required on Form 203 shall be filed with the Compliance Branch of the Administration as soon as possible after the close of business on the day covered by the report and in any event not later than 9 o'clock a. m. on the next following business day; *Provided*, That reports may be transmitted by mail, in accordance with instructions furnished by the Administration. Reports received by mail will be considered duly filed if postmarked not later than midnight of the day covered by the report.

Sec. 2.13[6a] Assignment of code number. Upon receipt of the first report from any person on Form 203, or upon application in advance, the Administration will assign to such person a code number. In all reports on Form 203 filed thereafter, such code number shall be used instead of the name of such person.

Sec. 2.14[6a] Books and records kept, information furnished, by persons holding or controlling open contracts of specified size. Persons having or controlling open contracts in any future of any grain on any contract market equal to or in excess of the amount fixed in section 2.21 hereof shall keep books and records showing the details concerning such contracts and all related transactions, and upon request shall furnish the Administration with the

6. As amended April 8, 1942, and February 15, 1943.

6a. As amended April 8, 1942.

names and addresses of all futures commission merchants and board of trade members with whom or through whom such contracts are held and of all persons having a participating financial interest in such contracts, together with such other pertinent information as may be called for.

Sec. 2.15[6a] Information required upon call. Each person required to report on Form 203 shall,

(a) if a partnership, furnish upon call the name and address of each partner;

(b) if a corporation, furnish upon call the name and address of each stockholder who owns or controls 20 percent or more of the capital stock of such corporation; and

(c) if an association or trust, furnish upon call the name and address of each person participating in the management or having any financial or beneficial interest in the trading operations of such association or trust.

Such information shall be furnished to the Administration upon call in accordance with instructions contained in the call.

Form 204

Sec. 2.16[6a] Merchandisers, processors, and dealers holding or controlling open contracts of specified size to report weekly on Form 204. Every *person* who is engaged in merchandising, processing, or dealing in, grain or grain products and who holds or controls open contracts in any one future of any grain on any contract market which equal or exceed the amount fixed in section 2.21 hereof shall report to the Administration on Form 204, which report shall be rendered as of the close of business on *Friday* of each week unless otherwise authorized in writing by the Administration upon good cause shown.

Sec. 2.17 Information shown in reports on Form 204.

6a. As amended April 8, 1942.

Such report shall contain the following information with respect to *each* grain in which the person reporting holds or controls open contracts in any one future thereof on or subject to the rules of any contract market equal to or in excess of the amount fixed in section 2.21 hereof:

(a) the amount of the net long or net short cash-grain position of such person in such grain;

(b) the make-up of the cash-grain position of such person in such grain showing—

(1) the amount of stocks of such grain or products or byproducts thereof,

(2) the amount of purchase commitments open in such grain or products or byproducts thereof, and

(3) the amount of sale commitments open in such grain or products or byproducts thereof; and

(c) the amount of open contracts held by such person in all futures of such grain on all boards of trade in the United States and elsewhere.

Sec. 2.18[7] Cash-grain position; how determined. In determining the cash-grain position of any person reporting on Form 204, such person shall use such standards and conversion factors applying to grain products and byproducts as are usual and common to the business in which he is engaged. If, in determining the cash-grain position of such person for hedging purposes, it be his practice regularly to exclude certain products or byproducts, such products or byproducts shall be excluded in reporting such cash-grain position on Form 204.

Such person shall upon request furnish the Administration with detailed information concerning the kind and amount of each product or byproduct included in computing his cash-grain position and the conversion factor used for each such product or byproduct.

7. As amended April 8, 1942.

Sec. 2.19 [8] Time of filing reports on Form 204. Unless otherwise authorized in writing by the Administration upon good cause shown, reports required on Form 204 shall be filed with the Compliance Branch of the Administration not later than the next business day following the day covered by the report: *Provided,* That reports may be transmitted by mail in accordance with instructions furnished by the Administration. Reports received by mail will be considered duly filed if postmarked not later than midnight of the last day allowed for filing.

Amounts Fixed for Reporting on Forms 201, 203, and 204

Sec. 2.20 Amount fixed for reporting on Form 201. For the purpose of sections 2.04 and 2.05 of part 2 of these rules and regulations, the amount specified for reporting accounts on Form 201 is 200,000 bushels, but such specified amount shall not apply to special calls issued under authority of section 2.22 hereof.

Sec. 2.21 Amount fixed for reporting on Forms 203 and 204. For the purpose of sections 2.10, 2.11, 2.14, 2.16, and 2.17 of part 2 of these rules and regulations, the amount fixed by the Secretary of Agriculture, under authority of section 4i (2) of the Commodity Exchange Act, for reporting on Form 203 and Form 204 is 200,000 bushels.

Special Calls

Sec. 2.22 [9] Special calls; reports on Form 201. Whenever in the judgment of the Director there is danger of congestion in any delivery month, each member of a contract market and each futures commission merchant shall, upon call, report all accounts carried by him which show open contracts in any designated grain future equal to or in

8. As amended May 9, 1942, and February 15, 1943.

9. As amended April 8, 1942, and February 15, 1943.

excess of the amount specified in the call. Such report shall be made to the Administration on Form 201, and shall be prepared and filed in accordance with instructions contained in the call. As to such calls, the amount specified for general reporting purposes in section 2.20 hereof shall have no application.

Sec. 2.23[9] Special calls; reports on Form 203. Whenever in the judgment of the Director there is danger of congestion in any delivery month, each member of a contract market who holds or controls open contracts in any grain future shall, upon call, report all open contracts in grain futures held or controlled by him if the amount thereof be equal to or in excess of the amount specified in the call. Such reports shall be made to the Administration on Form 203 and shall be prepared and filed in accordance with the instructions contained in the call. As to such calls the amount fixed for general reporting purposes in section 2.21 hereof shall have no application.

ORDER OF SECRETARY OF AGRICULTURE UNDER SECTION 5a (4) OF THE COMMODITY EXCHANGE ACT.

UNITED STATES OF AMERICA.

Before the Secretary of Agriculture.
(Hearing Docket C. E. A. No. 2.)

ORDER.

IN THE MATTER OF A DELIVERY PERIOD AFTER THE CLOSE OF TRADING IN FUTURES IN WHEAT, CORN, OATS, BARLEY, RYE, AND FLAXSEED.

Pursuant to the provisions of section 5a (4) of the Commodity Exchange Act (U. S. C., 1934 ed. and Supp. III, title 7, sec. 7a (4)), I, H. A. Wallace, Secretary of Agriculture, after full consideration of the record made at the

9. As amended April 8, 1942, and February 15, 1943.

hearing hereinafter mentioned, do hereby find the following:

1. Due notice of a public hearing in this matter was published in the November 12, 1937, issue of the Federal Register, was sent by mail to each contract market on November 12, 1937, and was sent by mail to each registered futures commission merchant and floor broker on November 17, 1937.

2. In accordance with such notice, a public hearing was held in Room 300, Board of Trade Building, Chicago, Ill., beginning at 10 o'clock a. m. on November 30, 1937, at which all persons were given opportunity to hear, present, refute, and comment upon evidence in the premises.

3. Hedging and speculation, rather than receiving and delivering the commodity, are the purposes for which the major portion of contracts for future delivery of wheat, corn, oats, barley, rye, and flaxseed are made on contract markets.

4. Usually, a very large proportion of futures contracts in such commodities on contract markets is closed out by offset as the end of the delivery month approaches, only a small percentage being settled by delivery.

5. When it appears that there might be a scarcity of the deliverable commodity, the long interests, while not desiring the commodity itself, not infrequently stand for delivery to profit from the temporary price advance caused by the efforts of shorts to cover or to obtain the deliverable cash commodity, and a "squeeze" and market congestion occur.

6. In promoting the "squeeze" situation, longs frequently withhold supplies of the deliverable commodity in their control from the cash market, further inflating the local price, which must tumble when the delivery period ends and the longs dispose of their unwanted supplies.

7. The artificial local price thus created draws the commodity from its normal channels to the local market, where it is not needed after it is delivered, resulting in market congestion in the cash commodity and fluctuations endangering price stability.

8. If there is provision for a period of seven business days during which contracts for future delivery in the current month of wheat, corn, oats, barley, rye, or flaxseed may be settled by delivery after trading in such contracts has ceased, the longs will know in advance that the deliverable commodity can be brought into the market from a large surrounding area, and such knowledge will tend to discourage attempts to cause a "squeeze."

9. Provision for such a period of seven business days, therefore, with respect to such commodities, on every contract market on which there is trading in futures therein, will tend to prevent "squeezes" and market congestion endangering price stability.

I THEREFORE ORDER and require a period of seven business days during which contracts for future delivery in the current delivery month of wheat, corn, oats, barley, rye, or flaxseed may be settled by delivery of the actual cash commodity after trading in such contracts has ceased, for each delivery month after May 1938, on all contract markets on which there is trading in futures in any of such commodities, and I hereby direct such contract markets, and each of them, to provide therefor.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington on this 17th day of February, 1938.

HENRY A. WALLACE,
Secretary of Agriculture.

(Seal)

ORDERS OF COMMODITY EXCHANGE COMMISSION UNDER SECTION 4a OF THE COMMODITY EXCHANGE ACT.

UNITED STATES OF AMERICA.

Before the Commodity Exchange Commission.
(Hearing Docket C. E. A. No. 3.)

FINDINGS OF FACT, CONCLUSIONS, AND ORDER.

IN THE MATTER OF LIMITS ON POSITION AND DAILY TRADING IN WHEAT, CORN, OATS, BARLEY, RYE, AND FLAXSEED, FOR FUTURE DELIVERY.

As used herein, the word "grain" includes wheat, corn, oats, barley, rye, and flaxseed, and the word "person" includes individuals, associations, partnerships, corporations, and trusts.

Findings of Fact.

Pursuant to the provisions of Section 4a of the Commodity Exchange Act (U. S. C., 1934 ed. and Supp. III, title 7, sec. 6a), the Commodity Exchange Commission, after full consideration of the record made at a public hearing held in Chicago, Illinois, beginning December 1, 1937, of which due public notice had been given, and at which all persons were given opportunity to hear, present, refute, and comment upon evidence in the premises, does hereby find the following:

A. Except as otherwise stated herein, trading in any one grain for future delivery on a contract market, by a person who holds or controls a speculative net position of more than 2,000,000 bushels, long or short, in any one future or in all futures combined, in such grain on such contract market, tends to cause sudden and unreasonable fluctuations and changes in the price of such grain not warranted by changes in the conditions of supply or demand,

and is not needed to maintain market liquidity or to facilitate hedging on such contract market.

B. A speculative long or short position in excess of 2,000,000 bushels consisting of spreads in any one grain between markets is less likely to cause sudden and unreasonable fluctuations and changes in price than that mentioned in paragraph A hereof.

C. Except as otherwise stated herein, speculative buying or speculative selling by any person during one business day of more than 2,000,000 bushels in any one future, or in all futures combined, in any one grain on any one contract market, tends to cause sudden and unreasonable fluctuations and changes in the price of such grain not warranted by changes in the conditions of supply or demand and is not needed to maintain market liquidity or to facilitate hedging on such contract market.

D. The buying or selling of amounts in excess of 2,000,000 bushels in any one future is less likely to cause sudden and unreasonable fluctuations and changes in price than that mentioned in paragraph C hereof if such buying or selling consists of spreads in any one grain between markets.

Conclusions.

Upon the foregoing facts, it is concluded that in order to diminish, eliminate, or prevent the undue burden of excessive speculation in grain futures which causes unwarranted price changes, it is necessary to establish limits on the amount of speculative trading, under contracts of sale of grain for future delivery on contract markets, which may be done by any one person; that 2,000,000 bushels is a reasonable limitation on the net long or net short position which any person may hold or control and upon the daily purchases or sales which any person may make, in any one grain on any one contract market, in any one future or all futures combined; that a higher limitation should be

fixed for net position and for purchases and sales if any part thereof represents spreading in the same grain between markets, and 3,000,000 bushels is a reasonable limitation under such circumstances, but in no event should the increase over 2,000,000 bushels exceed the amount of the net position represented by spreading nor should a spread include more than 2,000,000 bushels in any one future.

Order.

It Is Hereby Ordered That the following limits on the amount of trading under contracts of sale of grain for future delivery on or subject to the rules of contract markets which may be done by any person be, and they are hereby, proclaimed and fixed, to be in full force and effect on and after December 31, 1938:

Position Limits.

1. The limit on the maximum net long or net short position which any one person may hold or control in any one grain on any one contract market, except as specifically authorized by paragraph 2 hereof, is: 2,000,000 bushels in any one future or in all futures combined.

2. To the extent that the net position held or controlled by any one person in all futures combined in any one grain on any one contract market is shown to represent spreading in the same grain between markets, the limit on net position in all futures combined set forth in paragraph 1 hereof may be exceeded on such contract market, but in no case shall the excess result in a net position of more than 3,000,000 bushels in all futures combined nor more than 2,000,000 bushels in any one future.

Daily Trading Limits.

3. The limit on the maximum amount which any person may buy, and on the maximum amount which any person

may sell, of any one grain on any one contract market during any one business day, except as specifically authorized by paragraph 4 hereof, is: 2,000,000 bushels in any one future or in all futures combined.

4. To the extent that purchases or sales of any one grain on any one contract market during any one business day made by any person are shown to represent spreading, or the closing of spreads, in the same grain between markets, the limit set forth in paragraph 3 hereof may be exceeded on such contract market, but in no case shall the excess result in total purchases of more than 3,000,000 bushels, or total sales of more than 3,000,000 bushels, and in no event shall such person's total purchases or total sales, during any one business day, in any one future exceed 2,000,000 bushels.

The foregoing limits upon position and upon daily trading shall not be construed to apply to bona fide hedging transactions as defined in paragraph (3) of section 4a of the Commodity Exchange Act.

Nothing contained in these Findings of Fact, Conclusions, or Order shall be construed to affect any provisions of the Commodity Exchange Act relating to manipulation or corners, nor to relieve any contract market, or its governing board, from responsibility to prevent manipulation and corners under paragraph (d) of section 5 of the Commodity Exchange Act.

In testimony whereof we have hereunto affixed our respective signatures this 22nd day of December, 1938.

H. A. WALLACE
Secretary of Agriculture,
Chairman

DANIEL C. ROPER
Secretary of Commerce

HOMER CUMMINGS
Attorney General

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 473

ILLINOIS COMMERCE COMMISSION, ET AL., ETC.,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO,
A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER OF BOARD OF TRADE OF THE CITY OF CHICAGO, RESPONDENT

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER OF BOARD OF TRADE OF THE CITY OF CHICAGO, RESPONDENT.*

OPINIONS BELOW.

The opinion of the District Court (Tr. 220) is not reported. The opinion of the Circuit Court of Appeals (Tr. 242) is reported in 156 F. (2d) 33.

*We shall refer to Petitioners Illinois Commerce Commission, et al., No. 471 as "Commission," and Petitioners Daniel F. Rice & Co., *et al.*, No. 473 as "Rice," and this respondent files identical answers in No. 471 and 473.

STATEMENT.

The respondent, Board of Trade of the City of Chicago, is a corporation by legislative act of the Illinois State Legislature approved February 18, 1859 (Tr. 28-30). Its activities affect the flow of grain in interstate commerce, and the Congress of the United States has exercised its authority to regulate its activities by legislation commonly known as the Futures Trading Act (An Act of August 24, 1921, c. 86, 42 U. S. Stat. 187), the Grain Futures Act (Act of September 21, 1922, c. 369, 42 U. S. Stat. 998), and lastly the Commodity Exchange Act (Act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17a), and it operates as a board of trade through its designation as a contract market by the Secretary of Agriculture by virtue of his authority under the Commodity Exchange Act (Tr. 3).

It appears from paragraph 15 of the Complaint filed with the Illinois Commerce Commission (Tr. 17) that the Commission is asked to assume jurisdiction of the rules and regulations of the Board of Trade "*covering its maintenance as a commercial grain exchange*," and (under the prayer for relief, Tr. 19) to declare inoperative and void such rules and regulations which have not received the prior approval of the Illinois Commerce Commission and to require the Board of Trade "*to adopt and submit for approval*, rules and regulations which are fair, equitable, adequate and specific" as determined by the Illinois Commerce Commission. As we have alleged (Tr. 3), the Board of Trade exists as a commercial grain exchange only by virtue of its designation as a contract market by the United

States Secretary of Agriculture under the authority of the Commodity Exchange Act. It cannot exist otherwise. No state statute may authorize its maintenance.

The interference of the Illinois Commerce Commission sought in Daniel F. Rice & Company's complaint, will not only cause the State to assume control of the Board in its "maintenance as a commercial grain exchange," but will subject it to penalties for failure to comply with orders of the Illinois Commerce Commission, and will require large expenditures of funds in resisting action by the Commission, unless restrained by the Federal Court.

Statements by the Attorney General that the proceedings before the Illinois Commerce Commission, "being merely investigatory, they do not interfere with interstate commerce" are without foundation (Com. Pet., pp. 12-13). Even the statement of the case in the same brief (p. 9) negatives any such conclusion, for it is there said that the petition "prayed an investigation in the premises and the entry of orders * * *."

Petitioners have in no way pointed out any fallacy, misstatement or error in the statement of the Circuit Court of Appeals that is the basis of its decision (Tr. 261), 156 F. (2d) 33 (44):

> "It is plain, so we think, that any rule or regulation promulgated by the Board of Trade relative to its transactions in warehouse receipts must conform to and be consistent with the requirements of the federal authority in connection therewith. Any rule or regulation in conflict with or in excess of such authority would be invalid, and this would be so whether or not it was approved by the Illinois Commission. It is equally plain that any rule or regulation promulgated by the Commission concerning the same subject matter, which conflicted with or exceeded the power vested in the federal authority, would be of no effect. We therefore are of the view that Congress has invaded

the precise field occupied by the Illinois Commission by reason of § 194 (b) of the Illinois Grain Warehouse Act and has rendered its authority inoperative."

The Commission states (p. 7) that the case is of first impression and "nevertheless the decisions of the Circuit Court of Appeals are probably in conflict with the teachings of this court's decisions most nearly in point," and in the Rice petition it is said (p. 5): "This is a case of first impression. No court has previously passed upon the validity of state regulation of rules of boards of trade in the face of claimed repugnance to the Commodity Exchange Act."

Board of Trade v. *Olsen*, 262 U. S. 1, *Board of Trade* v. *Wallace*, 67 F. (2d) 402 (certiorari denied by this court), and the opinion of this court in *Board of Trade* v. *Christie Grain & Stock Co.*, 198 U. S. 236, show that the very nature of the functions of the Board of Trade precludes any real probability of conflict between the decision of the Circuit Court of Appeals in this case and decisions of this court.

The rules of the Board of Trade which Rice refers to (p. 5) as establishing warehousing standards and practices do no such thing: they only relate to the "regularity" of those warehouses from which grain may be delivered on futures contracts. They relate entirely to regularity for the purpose of delivery on futures contracts. Under Sec. 5a (7) of the Commodity Exchange Act, the warehouse receipts of a federally licensed warehouse must be accepted in satisfaction of futures contracts if the ware-

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*Rule 281. * * * deliveries shall be made by the delivery of registered warehouse receipts issued by warehouses which have been declared regular by the Board. The Board by regulation may prescribe the conditions upon which warehouses may be declared regular, and also conditions upon which warehouse receipts issued by regular warehouses shall be deliverable (Tr. 96).

house meets with reasonable requirements as to location, accessibility and suitability. This is recognized by Regulation 1829 of the Board of Trade (Tr. 180-181). Rice wants the Illinois Commerce Commission to order the Board of Trade to place conditions upon the use of receipts of Federal warehouses to satisfy futures contracts.

ARGUMENT.

I.

The District Court Had Jurisdiction Because (1) the Right to Relief Depends on the Construction or Application of an Act of Congress; and (2) the Case Arises Under a Federal Law Regulating Interstate Commerce; and (3) the Commodity Exchange Act Is a Valid Exercise of the Power of Congress Over Interstate Commerce.

(1) The District Court had jurisdiction since the right to relief depends on the construction or application of an act of Congress (subdivision 1a, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (1) (a)).

The pleading adequately discloses a present controversy dependent for its outcome upon the construction of a federal statute. *Peyton* v. *Railway Express Agency, Inc.*, 316 U. S. 350, 353, and cases cited therein.

(2) The District Court had jurisdiction since the suit arose under a law regulating interstate commerce (subdivision 8, § 24 of the Judicial Code, 28 U. S. C. A. § 41 (8)).

The Judicial Code conferred jurisdiction upon the District Court. *Mulford* v. *Smith*, 307 U. S. 38, 46.

(3) The Commodity Exchange Act is a valid exercise of the power of Congress over interstate commerce.

In *Board of Trade* v. *Olsen, United States Attorney*, 262 U. S. 1, in holding that the Grain Futures Act was not unconstitutional, said (33-36):

> "The Chicago Board of Trade is the greatest grain market in the world. *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 235. * * *

"It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in *Stafford* v. *Wallace*, 258 U. S. 495.

* * * * * *

"The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe, as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East.

* * * * * *

The Court further said (40):

"In view of the actual interstate dealings in cash sales of grain on the exchange, and the effect of the conduct of the sales of futures upon interstate commerce, we find no difficulty under *Munn* v. *Illinois*, 94 U. S. 113, 133, and *Stafford* v. *Wallace*, *supra*, in concluding that the *Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such.*"

In a late case in Illinois, *Albers* v. *Lamson*, 380 Ill. 35, the court referred to *Miller* v. *Sincere*, 273 Ill. 194, and then said (41-42):

"After this decision the Congress of the United States found it appropriate to further define national public policy in that field of interstate commerce wherein the Federal government is supreme. In 1934 a comprehensive act was passed known as 'Securities Exchange Act of 1934.' (U. S. C. A. Tit. 15, 78a, *et seq.*) This act followed the Securities act of 1933. (U. S. C. A. Tit. 15 77a, *et seq.*) There was also enacted by Congress the Commodity Exchange act. (U. S. C. A. Tit. 7, sec. 1, *et seq.*) * * * *That the Securities and Exchange Commissions, the boards of trade and other similar instrumentalities are engaged in interstate commerce is not a debatable question.*" (Italics ours.)

It thus appears that the Illinois Supreme Court, as well as this Court, has recognized the Commodity Exchange Act as legislation regarding instrumentalities engaged in interstate commerce.

II.

The Johnson Act Amendment of 1934 Is Not Applicable to This Case.

The Johnson Act Amendment (§ 24 (1) of the Judicial Code; 28 U. S. C. A. § 41 (1)) has no application to this case because:

(a) *It is not claimed that the assumption of jurisdiction by the Commission is repugnant to the Constitution of the United States, and it is not based on Diversity of Citizenship.*

Respondent does not contend that the state statute is unconstitutional. We contend that the state statute as interpreted and applied by the Commission conflicts with the Commodity Exchange Act.

In *Ex parte Bransford*, 310 U. S. 354, this Court said (358-359):

> "The declaration of the supremacy clause gives superiority to valid federal acts over conflicting state statutes but this superiority for present purposes involves merely the construction of an act of Congress, not the constitutionality of the state enactment."

Again, in the case of *Ex parte Buder*, 271 U. S. 461 (1926) this Court said (466-467):

> *"The claim that the tax is void rests, not upon a contention that the state statute under which it was laid is unconstitutional, but upon a contention that the statute is no longer in force."*

See, also, *Cloverleaf Butter Co. v. Patterson*, 116 F. (2d) 227; 315 U. S. 148.

Because of the foregoing, we believe the Johnson Act has no application. Counsel claim in effect that the Johnson Act has application, even without diversity of citizenship or repugnance of the order to the Constitution, where the order involved "(3) has been made after reasonable notice and hearing and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such state."

(b) *It was not necessary for the Board of Trade to exhaust state remedies, either by petition for rehearing or by appeals or writs of error through all of the courts of Illinois.*

It was argued in the trial in the Circuit Court of Appeals under this point that the respondent should have applied to the Commission for a rehearing. It is intimated that no Federal injunction could be obtained until the Board of Trade had sought review of the Commission order in the Supreme Court of Illinois.

(1) No petition for rehearing was necessary.

The motion before the Commission was to dismiss on the ground that the Commission was without jurisdiction of the subject matter.

The order on the motion (Tr. 6 of our Complaint) notified the Board of Trade that its motion was denied and added: "You are hereby further notified that the Commission has set the above case for hearing at the office of the Commission • • • on October 24, 1944."

No opinion was furnished. What would constitute a Petition for Rehearing? Nothing more than to refile the briefs and re-argue the case. Certainly the order of the Commission in the manner it was entered showed no findings that would serve as a basis for an application for a rehearing.

Although Section 71 of the Public Utility Act, referred to in the Commission's brief (p. 13), provides for an application for rehearing within thirty days after the service of an order and the Commission has twenty days thereafter to grant or deny the application, the order was entered on October 24th. Surely the Commission did not propose to entertain or expect any Petition for Rehearing, when such petition would not have been due until after the date the cause had been set for trial.

In *Prendergast* v. *New York Telephone Company*, 262 U. S. 43, in which the court held that a petition for rehearing before the Commission before appealing to the Federal Court was unnecessary, it was said (49):

> "Here the Commission did not suggest in its answer that it perceived any ground upon which it would have granted a rehearing, if an application had been made, but, on the contrary, maintained the correctness of its orders in all respects. Manifestly under such circumstances the injunction should not have been denied merely because application had not been made to the Commission for a rehearing."

The same reasoning applies here on three grounds: (1) the answer of the Commission in this suit does not suggest in any respect that the Attorney General perceived any ground upon which the Commission would have granted a rehearing; and (2) the order denying the Board of Trade's motion to be dismissed because the Commission lacked jurisdiction stated no grounds whatsoever for the order and surely gave no indication that if an application had been made the Commission would have given it any consideration; (3) *the Commission set the case for trial fourteen days after the order and thus did not allow the requisite thirty days for filing the petition for rehearing.* The order did not comply with the statute (Section 65 of the Public Utilities Act) which provides:

"At the conclusion of such hearing the commission

shall make and render findings concerning the subject-matter and facts inquired into and entered its order based thereon."

The order appealed from simply denied the Board of Trade's motion. No opportunity for a petition for rehearing was allowed by the Commission; its order was in such form that no reason for such petition appeared.

In a decision handed down November 5, 1945, *Levers* v. *Anderson*, 326 U. S. 219, 222, this Court has followed its ruling in *U. S.* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274 and *Prendergast* v. *New York Telephone Company*, 262 U. S. 43.

The case of *Natural Gas Company* v. *Slattery*, 302 U. S. 300, mainly relied upon by the Commission (p. 20) is not in point. In the *Slattery* case the Commission ordered a non-party, Natural Gas Company, to produce its books and records. The Gas Company, without ever appearing before the Commission to resist the scope of the order, sought an injunction in the Federal court, contending that the order would require it to expend large sums of money in preparing the information. The Supreme Court treated the order to produce as if it were a subpoena and pointed out that all citizens are required to appear and give evidence. The Supreme Court then said it would not enjoin the scope of the order because Natural Gas had never brought to the attention of the Commission its contentions that the order was too broad. The conclusion of the *Slattery* case supports our position and is as follows (311):

"The extent to which a federal court may rightly relax the rule *where the order of the administrative body is assailed in its entirety, rests in the sound discretion which guides exercise of equity jurisdiction. Hollis* v. *Kutz, supra; United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 282; cf. *United States* v. *Sing Tuck, supra.* But there are cogent reasons for requiring resort in the first instance to the ad-

> ministrative tribunal when the particular method by which it has chosen to exercise authority, a matter peculiarly within its competence, is also under attack, for there is the possibility of removal of these issues from the case by modification of its order. Here the commission had authority to pass upon every question raised by the appellant and was able to modify the order. In such circumstances the trial court is free to withhold its aid entirely until administrative remedies have been exhausted." (Italics ours.)

The *Slattery* case does not represent a denial of federal relief because a rehearing was not applied for. It is a case of denial of federal relief because the non-party, Natural Gas Company, had never presented its contentions to the Commission at all. Naturally, it was held that the Federal courts would not consider contentions that had never been made before the Commission at all.

But when the Commission has heard evidence and has decided the matter, the Federal courts will not deny relief merely because the complaining party has not elected to avail himself before the administrative tribunal of a purely permissive right to petition there for rehearing.

Counsel infer (p. 14 Commission's brief) that the suit was to enjoin an order of administrative board or commission of a state which affects rights chargeable by a public utility and that interstate commerce was not involved. We have already pointed out that interstate commerce was involved. We also point out that it is not claimed that the order of the Commission affects rights chargeable by a public utility. The Board of Trade is a grain market "engaged in a business affected with a public national interest and is subject to national regulation as such" (and is not a public utility under the laws of Illinois); nor are the service or other charges of the Board of Trade involved, and the Board does not own or operate any warehouses.

Counsel repeatedly states that all that was sought before the Illinois Commerce Commission was "a mere investigation." The prayer for relief in the complaint filed before the Commission (Tr. 18-19) conclusively contradicts such assertion.

(2) Appeals and writs of error through the state courts were unnecessary.

The Board of Trade did not have to pursue its rights all through the state courts, as appears from the language in *Lane* v. *Wilson*, 307 U. S. 268, the court saying (274-275):

> "The other preliminary objection to the maintenance of this action is likewise untenable. To vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the state courts. Normally, the state legislative process, sometimes exercised through administrative powers conferred on state courts, must be completed before resort to the Federal courts can be had. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. But the state procedure open for one in the plaintiff's situation (§ 5654) has all the indicia of a conventional judicial proceeding and does not confer upon the Oklahoma courts any of the discretionary or initiatory functions that are characteristic of administrative agencies. See Section 1 of Article IV of the Oklahoma Constitution; *Oklahoma Cotton Ginners' Assn.* v. *State*, 174 Okla. 243; 51 P. 2d 327. Barring only exceptional circumstances, see *e. g. Gilchrist* v. *Interborough Rapid Transit Co.*, 279 U. S. 159, or explicit statutory requirements, *e. g.* 48 Stat. 775; 50 Stat. 738; 28 U. S. C. § 41 (1), resort to a Federal court may be had without first exhausting the judicial remedies of state courts. *Bacon* v. *Rutland R. Co.*, 232 U. S. 134; *Pacific Tel. & Tel. Co.* v. *Kuykendall*, 265 U. S. 196."

III.

When Congress Assumed Complete Regulatory and Supervisory Means of Control Over Boards of Trade, State Regulation Was Superseded and Excluded.

As said in *Pennsylvania Railroad Company* v. *Public Service Commission*, 250 U. S. 566 (569):

> "* * * when the United States has exercised its exclusive power over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them. *Southern Ry. Co.* v. *Railroad Commission of Indiana*, 236 U. S. 439, 446; *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604; *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147."

Again, in *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, the Supreme Court in 1941 said (155, 156):

> "Exclusive federal regulation may arise, also, from the exercise of the power of Congress over interstate commerce where, in the absence of Congressional action, the states may themselves legislate. It has long been recognized that, in those fields of commerce where national uniformity is not essential, either the state or federal government may act. *Willson* v. *Black-bird Creek Marsh Co.*, 2 Pet. 245; *California* v. *Thompson*, 313 U. S. 109, 114. Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation. *But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application.*"

See, also, *Napier* v. *Atlantic Coast Line R. R. Co.*, 272 U. S. 605, *Hill et al.* v. *Florida*, 65 S. Ct. 1373 and *Southern Pacific Company* v. *Arizona*, 65 S. Ct. 1515.

IV.

The Commodity Exchange Act Exclusively Occupies the Field of Regulation of the Board of Trade and the Illinois Commerce Commission Is Without Power to Attempt to Regulate the Board of Trade.

It is urged by counsel that the Commodity Exchange Act is not comprehensive in scope and that the federal statute seeks only to control excessive speculation and manipulation in commodity exchanges.

The Appendix of Commission's brief (p. 75) contains only a few sections of the Commodity Exchange Act, which are referred to as "sections dealing with boards of trade." The entire Act must be followed by the Board of Trade and its members. This Court cannot construe the Act by reference only to a few sections referred to by counsel. As said in *Savage* v. *Jones*, 225 U. S. 501, 533:

> "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."

The Act does not seek only to control excessive speculation and manipulation in commodity exchanges and with respect to futures only. It is said in House Report No. 421 on H. R. 6772 in the President's message to Congress in 1934 accompanying the Commodity Exchange Bill:

> "The fundamental purpose of the measure is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over

those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves. *The bill has as another objective the restoration of the primary function of the exchanges which is to furnish a market for the commodities themselves.*" (Italics ours.)

Section 5a (7) of the Act provides that each contract market shall require that receipts issued under the United States Warehouse Act shall be accepted in satisfaction of any futures contract "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law." To enforce this, Regulation 1829 was passed (Tr. 180-181).

Section 5a (6) provides that each contract market shall require that all contracts of sale of any commodity for future delivery shall provide for the delivery of commodities of grades conforming to United States standards. Rule 295 (Tr. 68) was passed to comply with this section.

Section 5 (u) provides that the Secretary of Agriculture is authorized to designate any board as a contract market "when the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board." This does not refer to futures alone and was a prerequisite of the board being designated a contract market. It is covered by Rules 82 (Tr. 46) and 150 (Tr. 61) and other rules. Moreover, the entire Commodity Exchange Act is a part of the rules of the Board of Trade. Rule 603 (Tr. 118) and Regulation 1828 (Tr. 180).

It seems absurd to say, as urged by counsel, that the Act does not provide for affirmative regulation, for if the rules do not comply with the Commodity Exchange Act, the Secretary of Agriculture, under Section 5b, shall have cause for suspending the Board of Trade as a contract market.

Counsel say (p. 26) that the limited and circumscribed character of the Commodity Exchange Act and the underlying congressional intent were authoritatively discussed in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188. That case was with respect to the Grain Futures Act, but nevertheless the case does not support counsel's contention when examined. That case did not concern a contract made on the Board between its members, but a contract between members and non-member customers. In *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188, it was pointed out (193):

> "There is no suggestion that these contracts violated the law of the place where the exchange was situated. It may be assumed that they were valid as between the Uhlmann Grain Company and its fellow members of the exchanges."

It was then pointed out that there were two distinct agreements, and while the agreement between the principals on the exchange was legal and proper, that between the customer and one of the principals might be void under Missouri law. The court said further (194):

> "If, as Dickson contends, and the trial court found, Dickson's agreement did not contemplate the execution of transactions on the exchange in his behalf, clearly the defense of illegality is governed by the law of Missouri, unless that law has been superseded by The Grain Futures Act."

The Missouri Act applied not to the futures trading on the exchange, but to an agreement existing separate from the transaction occurring on the exchange.

Likewise, it is said in the *Dickson* case (199):

> "The Missouri law is in no way inconsistent with the provisions of the federal act. It does not purport to legalize transactions which the federal act has made illegal. *It does not prescribe regulations for exchanges.*"

State v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621, (cited Commission's brief, p. 27) is not applicable, for in that case it is specifically stated (630):

> "The transactions here occurred in Sedalia, which was not a designated contract market. It was not a place permitted by the Grain Futures Act, nor was it a place forbidden by that act. The conduct of such a place was not covered by any of the terms of the act. It was wholly within the jurisdiction of the state to prevent the maintenance of such a place."

The statute is comprehensive in scope and it does provide affirmative regulation, as an examination of it will show. Under the Act on numerous occasions the Board has been required to pass rules and regulations. See, for instance, Regulations 1829 and 1832 (Tr. 180-181).

As to Section 12 and the provision that "The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, * * * or political subdivision thereof, * * *," the context of the quotation from *United Brokerage Co.* v. *Jensen*, 322 U. S. 202, 209, shows that the phrase lacked application to the situation in this case. Here the Board of Trade of the city could not operate as a contract market except by and under the Commodity Exchange Act, but nevertheless the State of Illinois attempted to exercise jurisdiction over the Board of Trade by requiring it to pass rules governing its operation as a contract market as ordered by the Illinois Commerce Commission.

Counsel state (p. 29) that:

> "The Commodity Exchange Act does not require any rule or regulation of the Board of Trade to be submitted to the Secretary of Agriculture for his approval."

But in *Board of Trade of the City of Chicago* v. *Wallace*, 67 F. (2d) 402, the Board of Trade's designation as a contract market had been ordered suspended for sixty days by the Commission authorized under the Grain Futures

Act because of rules it then had in effect. Under Section 4a (1) of the Act the board has to pass rules making effective the limits set by the Secretary of Agriculture on the amount of trading, such as Regulation 1832, etc. Moreover, the Board of Trade is prohibited by Section 5a(6) from making any rule permitting deliveries of commodities at grades other than conforming to the United States standard, and in 5a(7) from passing any rule prohibiting the acceptance in satisfaction of futures contracts of receipts of federally licensed warehouses (even "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any state").

Sections 4b and 4c of the Commodity Exchange Act declare it unlawful for any member of a contract market to use the market to cheat or defraud, etc., and Section 4c prohibits a wash sale, cross trade, fictitious sale, *et al.*, and the conclusion of clause (c) is: "Nothing in this section or section 4b shall be construed to impair any state law applicable to any transaction enumerated or described in such sections." These two sections emphasize that Congress has taken complete control of the contract market. They only permit the application of state law to any of the above transactions, so that a violator of those sections may be prosecuted under state law if applicable, as well as subject to the penalties of the Commodity Exchange Act if the above sections are violated.

The prohibition of state action in other respects is to be inferred when Congress states when state action may take place.*

As this answer is about to be filed, we were served with

*"It is well settled that an exception in a statute • • • excludes all other exceptions." 25 R. C. L. 983. "Provisos are construed as affecting the paragraph to which they are annexed." *Spring* v. *Olney*, 78 Ill. 101, 105; *Bass* v. *B. & O. T. R. Co.*, 142 F. (2d) 776, 778. "No further exceptions may be read into the act." *People* v. *Deep Rock Oil Co.*, 343 Ill. 388, 401.

a brief filed on behalf of the National Association of Railroad and Utilities Commissioners as *amicus curiae* in support of the petition for writ of certiorari. We note that John D. Biggs, one of the petitioners, and Chairman of the Illinois Commerce Commission, is also President of that Association. We note in this petition that the second quotation on page 29 from *Board of Trade* v. *Olsen* is so garbled as to be a misstatement of the actual quotation, as a reference to the case will show. This petition has been fully answered in the reply to the petitioners, the Illinois Commerce Commission and Rice.

Conclusion.

For the reasons stated, we respectfully submit that the petitions filed clearly failed to state any tenable ground for granting the writ of certiorari: The petitioners have failed to show any error in the decision of the Circuit Court of Appeals. There being no error shown the admission that the questions are of first impression, refutes the assertion that unnamed "decisions of the Circuit Court of Appeals are probably in conflict with the teachings of this court's decisions most nearly in point." The public interest will not be promoted by the granting of the petition.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 471.

ILLINOIS COMMERCE COMMISSION, ET AL., *Petitioners*,

v.

BOARD OF TRADE OF THE CITY OF CHICAGO, *Respondent*.

BRIEF FILED ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, AS AMICUS CURIAE, IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

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OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 156 Fed. 2d, page 33.

PRELIMINARY STATEMENT.

The National Association of Railroad and Utilities Commissioners is a voluntary association embracing within its membership the members of the regulatory commissions and boards of the several states of the United States except two, one of which has no state regulatory commission.

By the constitution of the Association, the President of the Association may direct the General Solicitor to appear on behalf of the Association (as distinguished from a particular commission represented in its membership) in any proceeding pending before any court or commission in which, in the judgment of such President, appearance on behalf of the Association should be made. This brief is offered for filing on behalf of said Association by direction of the President, in the general public interest.

STATEMENT OF THE CASE.

The Illinois Commerce Commission (hereinafter called the Commission), one of the petitioners herein, is an agency of state government of the State of Illinois, existing under the provisions of the laws of the State of Illinois, and having jurisdiction over public utility companies, including warehousemen, and over boards of exchange, operating within that state.

The respondent, a corporation by legislative act of the Illinois State Legislature approved February 18, 1859, is a commercial grain exchange situated in the City of Chicago. The activities of said Board of Trade, hereinafter sometimes called the Board, are subject to federal regulation under the Commodity Exchange Act (act of June 15, 1936, c. 545, 49 U. S. Stat. 1491, 7 U. S. C. 1-17 a). The Secretary of Agriculture has, under this act, designated the Board as a contract market.

Daniel F. Rice & Company (hereinafter called Rice), an Illinois partnership, is an owner, shipper and dealer in grain in the State of Illinois. In the course of its business, Rice makes use of warehouses situated in Chicago, which warehouses are also used by the members of the Board in the course of their business as grain exchange merchants. All of the warehouses so used by members of the Board are affected by and subject to certain rules and regulations prescribed by the Board.

On July 28, 1944, Rice filed with the Commission a complaint against the respondent in this case, and the respondents (Chicago warehousemen) in No. 470, October Term, 1946, alleging, as to the respondent herein, failure to comply with the Illinois Grain Warehouse Act of the State of Illinois.

In paragraph 15 of the Rice complaint it is charged that the rules and regulations pertaining to grain warehousemen, adopted by respondent, are uncertain, incomplete and ambiguous in their coverage, favor warehousemen and sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory. Paragraph 16 of the Rice complaint alleges that respondent has adopted rules and regulations relating to warehousing of grain without securing the approval of the Commission, as required by section 194b of the Illinois Grain Warehouse Act. The prayer of the Rice complaint asks the Commission to declare inoperative and void respondent's rules which have not received prior approval of the Commission, and to require the respondent to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific. (R. 17-19)

On August 31, 1944, respondent filed with the Commission a motion that it be dismissed from the proceedings on jurisdictional grounds. The specific grounds for dismissal, as stated in this motion, were: (1) that the Commodity Exchange Act and the regulations of the Secretary of Agriculture, hereinafter called the Secretary, issued thereunder, supersede and nullify the Constitution of the State of Illinois and all laws, statutes and ordinances of the State of Illinois and all orders and regulations of the Commission with respect to the operations of respondent as a contract market; and (2) that the Commission has no jurisdiction with respect to named warehouses affected by respondent's rules and regulations for the reason that these warehouses operate under federal licenses issued under the United States Warehouse Act, as to which the

Constitution and all laws of the State of Illinois pertaining to warehouse regulation have been superseded. (R. 20-24)

On October 10, 1944, the Commission entered its order denying respondent's motion that it be dismissed from the proceeding and setting the cause for hearing before it on October 24, 1944. (R. 27) The respondents in this case and in No. 470, thereupon filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, separate complaints for the purpose of enjoining Rice from the further prosecution of its proceeding before the Commission; of enjoining the Commission from entertaining further jurisdiction in the matter; and the Attorney General of the State of Illinois from instituting any proceeding against respondents for the purpose of enforcing any order of the Commission in the Rice proceeding. (R. 3-15)

The defendants named in the respondent's complaint filed answers and motions to strike the complaint and dismiss the cause. (R. 36, 40, 43) The two causes were consolidated for hearing in the trial Court and, on June 26, 1945, that court entered a single order, dismissing both causes of action. (R. 91) Upon separate appeals to the Seventh Circuit Court of Appeals, the order of the trial court was reversed. (R. 126) The Commission and the Attorney General of the State of Illinois, and Rice, have filed here their petitions for a writ of certiorari to review the decision of the Seventh Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT.

(1) The state authority sought to be exercised with respect to respondent Board of Trade is in aid of the state's general authority and duty to regulate public grain warehousemen. Assuming that state jurisdiction to regulate federally-licensed warehousemen will be sustained in the companion case, *Illinois Commerce Commission* v. *Great Lakes Elevator Corporation*, No. 470, such jurisdiction cannot be effectively exercised if board of trade rules and

regulations pertaining to grain warehousemen are held to be exempt from state supervision. Moreover, board of trade rules and regulations apply to state-licensed warehousemen as well as those which are federally licensed. Thus, even if it is held, in the companion case, that the state may not regulate federally-licensed warehouses, state regulation of the specified board rules and regulations is necessary and proper in connection with the state's regulation of state-licensed warehousemen.

(2) The Court below held that state supervision of board of trade rules and regulations relating to warehousing of grain, under section 194b of the state statute, had been wholly superseded. Yet the Commodity Exchange Act touches upon such rules and regulations in only three particulars, and provides no federal regulation or control whatever with respect to the great body of board rules and regulations relating to warehousing of grain. The effect of the decision of the Court below is therefore to create a hiatus in regulation, relieving boards of exchange operating under the Commodity Exchange Act from any regulation with respect to most of their rules and regulations pertaining to the warehousing of grain.

(3) This case is closely related to the companion case, No. 470, and if a writ of certiorari is granted in either case it should be granted in both. Both cases arose as a result of a single complaint filed with the Commission. The Commission, the trial Court, and the Circuit Court of Appeals each consolidated the two cases for purposes of hearing and decided the two cases in a single opinion. There is an intermingling of both parties and issues, and reversal of either case alone would produce an anomalous situation and afford petitioners inadequate relief.

(4) The question at issue here relates to the construction of the Constitution and federal statutes. Unless and until put to rest by this Court, this question will undoubtedly be the source of further litigation in other states, involving other boards of trade and grain exchanges. The principle

of constitutional law applied by the Court below—supersedure of state authority by virtue of the Supremacy Clause—is always destructive of state and local authority. Unless its application shall be restricted to cases where the national interest is vitally affected, state and local government will be seriously weakened and undermined without compensating benefit to the nation. This Court should now, in this and the companion case, reaffirm, for the benefit of all other federal and state courts, the policy of judicial restraint which has characterized this Court's application of the supersedure principle.

THE QUESTION PRESENTED.

While there are a number of procedural questions involved in this case, the issue of prime importance, in so far as the general public interest is concerned, is the Constitutional issue of supersedure of state authority. For this reason the brief of this *amicus curiae* is filed in support of the following proposition:

> The federal government has not, by legislation, preempted the matter of regulating board of trade rules and regulations so as to deprive the Commission of its authority with respect thereto.

SUMMARY OF ARGUMENT.

I. (pages 9 to 26). The state here is not attempting to regulate boards of trade in any general or comprehensive manner. It only seeks, pursuant to its general regulatory authority over public grain warehousemen, to approve or disapprove board rules relating to the warehousing of grain. The exercise of this limited state authority will not conflict with federal regulation under the Commodity Exchange Act. There are only four provisions of that act which expressly, or by implication, can be said to refer to board rules and regulations relating to warehousing of grain. These are section 5a(1), (3), (6) and (7). Accord-

ingly, if any conflict between state authority and particular provisions of the Commodity Exchange Act are to be found, it must be with respect to these four subsections of the federal act.

Section 5a(1) provides only that all board rules and regulations must be filed with the Secretary. This subsection gives the Secretary no power or duty to approve, disapprove, prescribe or in any way question or revise such rules. If the board rules so filed indicate that there has been a failure to comply with some other provision of the act, then the Secretary can invoke his enforcement powers. But such action would be based upon those other features of the act and not upon any authority conferred by section 5a(1). Accordingly, section 5a(1) cannot, in and of itself, be the source of any conflict between state and federal regulation.

Section 5a(3) requires boards of trade to promulgate rules requiring warehousemen to make reports, keep records, and permit such warehouse visitation as the Secretary may prescribe. No issue raised by the Rice complaint has the remotest connection with or raises the slightest question regarding rules complying with section 5a(3). While the state statute requires that such a rule receive Commission approval, the possibility that the Commission would disapprove such a rule is extremely remote, and wholly foreign to the issues raised by the Rice complaint. There are numerous board rules relating to the warehousing of grain which would be subject to Commission surveillance under section 194b. Of all these, only two or three rules are made in compliance with the federal act (section 5a(3), (6) and (7)). As to all the others, there being no federal statutory requirement, no possibility of conflict exists.

The state ought not to be denied the right to exercise authority with respect to all of these other rules pertaining to warehousing of grain, solely because there are three such rules where it is possible to imagine conflict. The

true question is not whether the state statute *might* be so administered as to give rise to conflict, but whether it *is* being so administered here. *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd.*, 315 U. S. 740, 750. *Watson* v. *Buck*, 313 U. S. 387, 401.

For the same reasons noted above, section 5a(6) and (7) poses no question of conflict requiring supersedure of state authority under section 194b. Respondent invites the Court to go searching for conflict among hypothetical cases depicting possible Commission action and expressly designed to develop conflict. This Court, in cases referred to above, has made it clear that it will not indulge in guesswork of this kind. At this stage of the proceeding there is no showing of direct and irreconcilable conflict between state action under section 194b, and federal regulation under the Commodity Exchange Act.

II. (Pages 26 to 34). The Commodity Exchange Act does not supply comprehensive and all-inclusive federal regulation of boards of trade. Accordingly that act manifests no Congressional intent wholly to exclude the state. The federal act is primarily concerned with a limited activity of boards of trade, namely, futures transactions, as distinguished from cash transactions. *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188, 198; *Board of Trade* v. *Olsen*, 262 U. S. 1, 36. Futures transactions actually constitute only a small fraction of the activity of boards of exchange. The application of the Commodity Exchange Act to boards of trade is also limited in many other respects.

It is a cardinal principle of law applicable to supersedure cases that the failure of Congress to occupy the entire field is not to be taken as an intention to require that the unoccupied portion remain unregulated, and so to preclude all state authority. *Kelly* v. *Washington*, 302 U. S. 1, 9. Section 12 of the act, authorizing the Secretary to cooperate with state officials, shows that Congress contemplated the continued exercise of state authority. This Court attaches great significance to such provisions in

supersedure cases. *Townsend* v. *Yeomans*, 301 U. S. 441, 454; *Union Brokerage Company* v. *Jensen*, 322 U. S. 202, 209. The respondent Board of Trade has heretofore, on numerous occasions and in several respects, recognized the continued validity of state regulation under section 194b.

III. (Pages 34 to 39). The United States Warehouse Act does not preclude the exercise of state authority over board of trade rules and regulations relating to warehousing of grain. This question is fully discussed in the brief of *amicus curiae*, filed in the companion case, *Illinois Commerce Commission* v. *Great Lakes Elevator Corporation*, No. 470, October Term, 1946. A summary of that argument is set forth herein.

ARGUMENT.

I.

Regulation Under the Illinois State Statute Pertaining to Boards of Trade Will Not Conflict with Federal Regulation Under the Commodity Exchange Act.

The state commission does not claim general regulatory jurisdiction over boards of trade, but only the power to disapprove board rules and regulations relating to warehousing of grain.

The first step in considering any supersedure case is to determine the scope of the state authority said to be superseded.

In the instant case this is a very simple process. There is only one provision of the Illinois statutes which authorizes any state regulation of boards of trade or grain exchanges. This provision, which is a part of the Illinois Grain Warehouse Act, reads as follows:

> "194b. Rules of board of trade or grain exchange to be approved. Sec. 6b. No rule or regulation of any board of trade or grain exchange *which relates to the warehousing of grain* in any public grain warehouse, or which relates to the custody of grain in any private

warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation *is approved* by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective. (Added by act approved July 14, 1927, L. 1927, p. 711)."[1]

It will be observed that this state regulatory statute is extremely limited in scope. It does not attempt to regulate boards of trade as such, but only to the extent that such boards influence and affect the functioning of grain warehouses. Its only purpose is to make more effective and complete the comprehensive regulation of public grain warehousemen which has been an important function of Illinois state government since *Munn* v. *Illinois*, decided in 1877.

Accordingly, Section 194b confers no authority upon the state agency to supervise and control board[2] practices, examine books, require reports, or to regulate boards in any other respect except as to their rules and regulations. It does not confer general authority with respect to *all* board rules and regulations, but *only* as to those which relate to the warehousing of grain. It does not authorize the state commission to prescribe rules and regulations relating to the warehousing of grain, but only to *approve or disapprove* such rules and regulations prepared and submitted by the board.

The fact that the state statute in question is of limited scope and has only restricted application to respondent Board of Trade is an important circumstance to be considered in determining whether that statute has been superseded. The more limited the operation of the state

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[1] Emphasis here, and elsewhere in this brief, is supplied.

[2] In this brief the term "board" will sometimes be used instead of "board of trade" or "grain exchange".

statute, the less likelihood of conflict with express provisions of the federal act and the less likelihood of repugnance to the policy of Congress. That the Court takes note of this circumstance is indicated by what was said, in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, following a review of prior decisions holding against supersedure:

> "... In all of these, however, it was the ruling of this Court that the federal enactment was consistent with the *narrow regulation sought to be enforced by the state* so that the state enactment did not stand 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' Hines v. Davidowitz, 312 U. S. 52, 67 ..." (page 157)

Respondent asserted in the Court below that the Rice complaint invokes Commission action beyond that authorized by the state statute quoted above, in that it asks the Commission to declare inoperative, respondent's rules and regulations governing its maintenance as a commercial grain exchange. (R. 17) Since the Commission refused to dismiss the Rice complaint, respondent argues that the Commission asserts jurisdiction to grant all the relief prayed for, including that not authorized by any statute and, accordingly, supersedure here is to be judged not by the scope of the state statute, but by the scope of the Rice complaint.

The respondent's appraisal of the Rice complaint may or may not be correct. It is obvious, however, that the Commission's refusal to dismiss the Rice complaint implies only that the Commission asserts *some* jurisdiction, and can grant *some* relief, with respect to the items in the complaint, including those relating to respondent Board of Trade. If the Commission has *any* jurisdiction with respect to respondent's rules and regulations, there was no alternative but to deny the motion to dismiss the complaint. In the Court below the Commission expressly acknowledged that the Commission's only authority with

respect to respondent was that conferred by Section 194b of the State Warehouse Act, quoted above, and further acknowledged that, under that statute the Commission may only disapprove rules which the Board of Trade itself initiates.

Had the Commission not expressly acknowledged that its authority is limited to the matter of approving rules and regulations relating to the warehousing of grain, still the Court would determine the question of supersedure on the basis of that limited statutory authority. This is true for the reason that the Court will not assume that an agency of government will exceed its own statutory authority.

If it later transpires that the agency exceeds its authority, then the act of doing so will be clearly invalid under state law and may also be invalid because in conflict with federal statutes or Congressional policy. Those questions, however, are to be dealt with when they arise, and not in advance, as respondent here asks the Court to do. As the Court said, in *W. W. Cargill Co.* v. *Minn. ex rel. Railroad and W. Com.*, 180 U. S. 452, in rejecting the contention that state warehouse regulation should be enjoined because it *might* be administered in an unconstitutional manner:

> "... If the commission refused to grant a license, or if it sought to revoke one granted, because the applicant in the one case, or the licensee in the other, refused to comply with statutory provisions or with rules or regulations inconsistent with the Constitution of the United States, the rights of the applicant or the licensee could be protected and enforced by appropriate judicial proceedings." (page 468)

The question here is not supersedure of state laws purporting to extend general regulatory controls to boards of trade, but supersedure of a single state statutory provision, enacted with the purpose of perfecting state warehouse regulation, empowering the Commission to dis-

approve board rules and regulations relating to warehousing of grain.

The limited state authority respecting board rules and regulations will not conflict with regulation under applicable provisions of the federal act.

At a later point in this brief it will be appropriate to review the general scope of the Commodity Exchange Act. But since the present inquiry is whether there is a conflict between particular provisions of the federal and state acts, we need now only consider the individual sections of the federal act bearing upon, or affecting, the specific and limited kind of regulation covered by the state statute.

As indicated in the foregoing section of this brief, the only state authority here in question is that single provision of the state statute empowering the Commission to disapprove board rules and regulations relating to warehousing of grain. In order to determine whether administration of that state statute is in conflict with federal regulation under the Commodity Exchange Act, it is necessary to examine every provision of the federal act directly or indirectly pertaining to the same subject of regulation—board rules and regulations relating to warehousing of grain.

Warehouses are specifically referred to in only two places in the Commodity Exchange Act—that is, in section 5a(3) and (7).

Section 5a(3) requires boards of trade to require warehouses out of which commodities are deliverable on futures contracts to make reports and keep records and permit visitation, as prescribed by the Secretary.

Section 5a(7) requires boards of trade to declare federally-licensed warehousemen regular for futures deliveries, irrespective of the possession of state licenses, "without discrimination," provided such warehouses meet reasonable requirements as to accessibility and suitability.

A third provision of the federal act—section 5a(6)—while not specifically referring to warehouses, relates so directly to warehouse operations that it may be considered as pertinent here. This provision makes it the duty of boards of trade to require that contracts of sale of any commodity for future delivery shall provide for the delivery of commodities of grades conforming to United States standards, if such standards shall have been promulgated.

None of the three provisions referred to above specifically require promulgation of board "rules and regulations." But they are open to such an interpretation and will be so construed for the purposes of this brief.

A fourth provision of the federal act does refer specifically to board rules and regulations and is sufficiently broad to include rules and regulations relating to the warehousing of grain. This is section 5a(1), requiring boards to furnish the Secretary of Agriculture with copies of all their rules and regulations.

There are other provisions of the Commodity Exchange Act placing a duty on boards of exchange respecting their rules and regulations. For example, boards are prohibited from having a rule or regulation which forbids the return of patronage dividends or the payment of commodity-unit compensation to cooperative members (sections 5(e) and 6a(2)). And, under section 4a(1), boards are required to adopt rules making effective the limits set by the Secretary of Agriculture on the amount of trading. But none of these other statutory provisions pertaining to rules and regulations relate in any way, directly or indirectly, to rules regarding the warehousing of grain—which is the narrow field of state authority in question here.

It follows from what is said above that, if there is any conflict here with the particular provisions of the federal act, calling for supersedure of state authority, it must be because of one or more of the only four provisions of the Commodity Exchange Act dealing with board rules re-

lating to warehousing of grain—section 5a(1), (3), (6) or (7). Accordingly these four provisions will be considered separately below.

Section 5a(1)

This provision of the Commodity Exchange Act reads as follows:

> "(Each contract market shall) Promptly furnish the Secretary of Agriculture copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein; ..."

It will be observed that this provision gives the Secretary no power and confers upon him no duty to approve, disapprove, prescribe or in any way question or revise such rules. Nor does it contain any requirement regarding the contents or subject matter of rules and regulations which are filed, or require that rules be adopted covering a particular matter.

The only purpose of this provision is to furnish the Secretary with information from which it can be determined whether the board is complying with the mandatory features of the act. Hence if the board rules filed with the Secretary disclose non-compliance with the three provisions specifically relating to warehousing of grain (section 5a(3), (6) and (7)), then the Secretary may act, under the enforcement provisions of the act.

But, as to board rules relating to warehousing of grain, but not violating the three provisions last referred to, the Secretary has no duty or power whatever, except to receive and file such rules. For example, if a board rule relates to warehouse rates, then, since the Commodity Exchange Act places no duty upon boards respecting such a rule, the Secretary has no supervisory power over that rule although, as indicated above, the rule must be filed with

the Secretary. It is therefore apparent that section 5a(1), requiring the filing of all board rules and regulations adds nothing to the Secretary's regulatory powers over such rules.

Accordingly, section 5a(1) cannot, in and of itself, be the source of any conflict between state and federal regulation. If the state, exercising authority under section 194b of the state statute, disapproves any present board rule relating to warehouses, that action conflicts in no way with the requirement of the federal act that all board rules and regulations be filed with the Secretary. The most that could happen under an exercise of state authority would be to make it necessary for a board to file a revised rule or regulation with the Secretary. This, likewise, would conflict in no way with section 5a(1), since that subsection expressly provides for the filing of changes and proposed changes.

If the revised rule relates to any of the matters touched upon in section 5a(3), (6) or (7), the Secretary may be called upon to act. But such action would be taken because of the duty placed upon the Secretary by those other subsections, (to be hereinafter discussed) and not because of any duty conferred by section 5a(1) now under consideration.

The only possibility of conflict between state authority and federal regulation under section 5a(1) would be if the state ordered boards of exchange to discontinue the practice of filing copies of rules and regulations with the Secretary. But the Rice complaint does not ask for any such action and the state statute does not authorize the entry of any such order. The Commission's only authority under section 194b of the state statute is to approve board rules and regulations relating to the warehousing of grain.

In view of the foregoing, it must be concluded that there is no conflict with federal regulation under section 5a(1) of the Commodity Exchange Act which calls for supersedure of the state authority invoked and sought to be exercised in the Rice proceeding.

Section 5a(3)

The pertinent language of this sub-section reads as follows:

> "(Each contract market shall) Require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe . . ."

In the administration of this subsection, the Secretary of Agriculture has promulgated a regulation (Reg. Sec. 1.44) which has been summarized by respondent in these words:

> Section 1.44 requires each contract market to require the operators of warehouses whose receipts are deliverable in satisfaction of commodity futures contracts made on or subject to the rules of such contract market to keep records and (c) "to permit visitation of the premises and inspection of the books and records of such warehouses by duly authorized representatives of the United States Department of Agriculture or the Department of Justice." This regulation applies not only to federally-licensed warehouses, but to all warehouses made regular by the rules of the Board of Trade, including those warehouses licensed by the state, and shows that in so far as the Commodity Exchange Act is concerned the activities of such state licensed warehouses are under the visitorial scrutiny of the Secretary of Agriculture. Federal, state or private warehouses must, in order that grain stored therein may be deliverable in satisfaction of futures contracts, *comply with the provisions of Board of Trade rules required under this regulation of the Secretary of Agriculture.*

It will be noted that this statutory provision and applicable regulation provide only that boards of trade shall require that designated warehouses shall (1) keep records;

and (2) permit visitation of the premises and inspection of the books and records of such warehouses.[3]

No issue raised by the Rice complaint, relating to respondent Board of Trade's rules and regulations, has the remotest connection with or raises the slightest question regarding rules requiring designated warehousemen to keep records, or rules permitting visitation of the premises and inspection of the books and records of such warehouses. As set forth in paragraph 15 of the Rice complaint, the criticism made of the board's rules pertaining to warehousemen concerns entirely different matters, to-wit:

> "... These rules and regulations should be such as to promote the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market. In fact, however, the Rules and Regulations adopted by the Chicago Board of Trade are uncertain, incomplete and ambiguous in their cover-

[3] While it is assumed, for the purposes of this brief, that compliance with these requirements calls for issuance of board rules and regulations covering those points, it would appear, in so far as disclosed by the record herein, that the respondent Board of Trade has not issued regulations fully and specifically dealing with these matters. Board Regulation 1632 (R. 157) requires warehousemen to accord every facility to any duly authorized committee for the examination of their books and records, for the purpose of ascertaining the stocks of all kinds of grain which may be on hand at any time. This may be taken as an adequate rule requiring the keeping of books and records, except that it does not require that they be kept for at least three years, as provided in section 5a(3). But there appears to be no Board rule specifically requiring designated warehousemen to permit visitation of the premises and inspection of the books and records by representatives of the Department of Agriculture, as provided in section 5a(3) and the Secretary's regulation, section 1.44.

However, there are some general Board regulations requiring Board members to comply with all lawful provisions of the Grain Futures Act and regulations thereunder (Reg. 603, R. 118), and requiring parent warehouse corporations to guarantee operation of subsidiary warehouses in conformance with the laws of the United States (Reg. 1621-A, R.155), which may, for present purposes, be taken as complying with the requirement of section 5a(3) and the Secretary's regulation 1.44.

> age, favor warehousemen and the sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory." (R. 17)

Should the Commission disapprove respondent's existing rules with respect to every matter complained of above, it would not be called upon to disapprove, in any respect, the particular rules provided for in section 5a(3) of the federal statute and section 1.44 of the Secretary's regulations.

Paragraph 16 of the Rice complaint alleges that, during the last ten years the Board has adopted new rules and regulations relating to the public warehousing of grain and the custody of grain in private warehouses, without securing the approval of the Commission. Paragraph (i) of the prayer of the Rice complaint asks the Commission to:

> "Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific." (R. 19)

The broad language of paragraph 16 of the Rice complaint, and of paragraph (i) of the prayer thereof, quoted above, would extend to and include Board rules, made in compliance with section 5a(3), requiring warehousemen to keep records, make reports and permit visitation by representatives of the Secretary of Agriculture, assuming such rules have been made during the last ten years and have not already been approved by the Commission.

It may be contended, therefore, that conflict may arise either (1) because of a Commission order declaring "inoperative and void," the Board's rules made in compliance with section 5a(3), thus leaving the Board with no rule on the subject; or (2) because of a Commission order disap-

proving portions of a Board rule deemed essential to compliance with section 5a(3).

Conceding that either action by the Commission would produce direct conflict with the federal act, it is submitted that the likelihood thereof is extremely remote and wholly foreign to the issues raised by the Rice complaint, and that supersedure should not be based upon speculation of this character.

Despite the broad language of paragraph 16 and the quoted portion of the prayer, it is apparent from a reading of the complaint, especially paragraph 15, quoted above, that Rice is not interested in invalidation or revision of Board rules requiring warehousemen to keep records and permit visitation by the Secretary.

But irrespective of what Rice is seeking, the Court ought not to assume that the Commission will exercise its authority in a manner which will produce direct conflict of this kind. Unless it can be said that any exercise whatever of state authority here will produce direct conflict with federal regulation, supersedure is not called for.

As previously pointed out, state authority is limited to the single matter of board rules and regulations pertaining to warehousing of grain, and so does not trench upon federal regulation in the general area covered by the Commodity Exchange Act. But, with respect to that one subject of state regulation, it is clear that there is a considerable area for the exercise of state authority without involving the slightest encroachment of regulation under the Commodity Exchange Act. There are numerous rules directly affecting or pertaining to the warehousing of grain. Eighteen such regulations (R. 155-159) are set forth in Chapter 33 of the Board Regulations entitled "Regulations Relating to Warehousing of Grain." Other Board regulations pertaining to warehousing are to be found in Chapter 10, entitled "Deliveries of Commodities" (R. 96-106) and Chapter 27, entitled "Regulations Relating to the Custodian Department" (R. 139-143). Of all these regulations,

only two or three are made in compliance with the federal act—section 5a(3), (6) and (7)—and as to all the others, there being no federal statutory requirement, no possibility of conflict exists.

The state ought not to be denied the right to exercise authority with respect to all of these other rules and regulations solely because, with respect to two or three individual rules, it might be possible for state action to come into conflict with federal regulation. If such cases arise, the Court can deal with them at that time, and the integrity and supremacy of federal authority will be fully protected. Until such a case does arise, as evidenced by a Commission order actually precipitating conflict, the state ought not, by this blanket injunction, be denied the right of functioning in this regulatory field where there is no possibility of conflict.

The true question here is not whether the State statute *might* be so administered as to give rise to conflict, but whether it *is* being so administered here. As this Court said, in *Allen-Bradley Local* v. *Wisconsin* E. Rel. Bd., 315 U. S. 740, holding that supersedure had not occurred:

> ". . . Section 10 (of the National Labor Relations Act) grants the federal board 'exclusive' power of enforcement. It is not sufficient, however, to show that the state Act *might* be so construed and applied as to dilute, impair, or defeat those rights. Watson v. Buck, 313 U. S. 387 . . ." (page 750)

Here the Commission has been given no opportunity to show the manner in which it will exercise its authority under section 194b of the state statute. The Court should not be asked to guess how such authority will be exercised when the state has an opportunity to do so. Above all, the Court should not be asked to guess that the state, having a substantial field for non-conflicting and hence permissible action, will choose to assure the invalidity of its own acts by precipitating a head-on collision with federal regulation in

the very limited portion of that field where conflict may be remotely possible.

In *Watson* v. *Buck*, 313 U. S. 387, this Court indicated that it will not indulge in guesswork of this kind. It was there said:

> "... No one can foresee the varying applications of these separate provisions which conceivably might be made. A law which is constitutional as applied in one manner may still contravene the Constitution as applied in another. Since all contingencies of attempted enforcement cannot be envisioned in advance of those applications, courts have in the main found it wiser to delay passing upon the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured. Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case. It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it. It is sufficient to say that the statutes before us are not of this type. Cases under the separate sections and paragraphs of the acts can be tried as they arise—preferably in the state courts. Any federal questions that are properly presented can then be brought here ..." (page 401)

To the same effect see: *Terminal R. Assoc.* v. *Brotherhood of R. Trainmen*, 318 U. S. 1, 6, and *W. W. Cargill* v. *Minn. ex rel. Railroad and W. Com.*, *supra*, quoted earlier in this brief.

Section 5a(6)

This subsection of the Commodity Exchange Act reads as follows:

> "(Each contract market shall) Require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated; . . ."

In compliance with this provision of the federal act, the Board has promulgated Rule 295 (R. 103) which is substantially in the words of the statute. The rule, however, adds the provision that:

> ". . . If no such United States grades shall have been officially promulgated, then such contract shall be performed on the basis of the grades established by the rules of the Division of Grain Inspection of the Department of Agriculture of the State of Illinois in force at the time of the making of the contract."

Everything which has been said above respecting Board rules made in compliance with section 5a(8), is equally applicable to this rule, made in compliance with section 5a(6). No allegation of the Rice complaint criticises the content of this Board rule. There is not the slightest basis for concluding that this rule would be disapproved by the state and that a revised rule, eliminating provisions necessary for compliance with section 5a(6) would be ordered.

If anything of this nature did happen, then would be the time for the Court to act. In the meantime, the state should be left undisturbed in its exercise of authority respecting numerous board rules pertaining to warehouses which are entirely free of regulatory control under the federal act.

Section 5a(7)

This is the third and last provision of the federal act affirmatively providing for the content of Board rules pertaining to warehouses. The pertinent language of this subsection reads as follows:

> "(Each contract market shall) Require that receipts issued under sections 241-273 of this title (United

States Warehouse Act) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law; ..."

Conforming to this statutory requirement, the Board has adopted Regulation 1829 (R. 180) reading as follows:

> "In compliance with Section 5a, sub-paragraph (7) of the Commodity Exchange Act, receipts for grain stored in the following grain elevators licensed under the United States Warehouse Act of August 11, 1916, as amended will be deliverable in satisfaction of futures contracts:
>
> Wabash Elevator operated by Morris Grain Company, Chicago & Northwestern Terminal Elevator & Annex operated by Cargill, Inc., Rock Island Terminal Elevators C and D operated by Continental Grain Co., National Elevator, operated by Great Lakes Elevator Corporation, Calumet Elevator operated by Rosenbaum Brothers, Inc., Santa Fe Elevator operated by Santa Fe Elevator Corporation, and Rialto Elevator operated by General Mills, Inc. Star Grain Division." (R. 180-181)

What is said above, in connection with the discussion of section 5a(3) and (6) is equally applicable here. Because of the same circumstances, and for the same reasons, the Court should not now say, in advance of action by the Commission, that the exercise of its authority under section 194b will conflict with, and is therefore superseded by, section 5a(7), requiring the Board regulation quoted above.

The respondent suggested, in its brief filed in the Court below, that the Commission could, under the state statute, require the Board to refuse to accept from federally licensed warehouses, receipts in satisfaction of futures contracts unless they were also licensed by the State of Illinois. Since this would be contrary to section 5a(7) and Board reg-

ulation 1829, promulgated thereunder, respondent states that it would then either have to refuse to comply with the order of the Commission or comply with it and then violate the Commodity Exchange Act, a dilemma subjecting respondent to penalties under either the federal or state acts.

The answer to this suggestion, provided by this Court in *Watson* v. *Buck, Terminal R. Assoc.* v. *Brotherhood of R. Trainmen*, and *W. W. Cargill* v. *Minn., ex rel. Railroad and W. Com.*, already referred to, is that *if* the state precipitates such a conflict, the Court can *then* fully safeguard federal authority, but that the Court will not assume, in advance, that the state will so act. In this day when federal legislation extends to almost every phase of the economy and touches almost every activity of the people, few general state regulatory statutes could survive the challenge of supersedure if they were required to withstand the test of every imaginable hypothetical case which could be designed to show conflict.

Summary on the question of conflict between particular provisions of federal and state statutes.

The only authority here sought to be exercised by the state is the approval or disapproval of board rules and regulations relating to the warehousing of grain. The respondent Board has many rules and regulations directly or indirectly relating to warehousing of grain. But of all those Board rules and regulations only three, made in compliance with section 5a(3), (6) and (7)—can be said to be made in compliance with provisions of the Commodity Exchange Act. As to all the others, the Board is completely free and clear of federal supervision.

The Board rules made in compliance with section 5a(3), (6) and (7) are not criticised in the Rice complaint and are therefore not likely to be dealt with at all in the Commission proceeding, except possibly for the formality of granting Commission approval thereof. If the Commission should disapprove any of these few Board rules required by

the federal act, and so bring about a conflict between federal and state authority, the Court can at that time act to safeguard federal supremacy. Such supremacy is not threatened now. Respondent invites the Court to go searching for conflict among hypothetical cases depicting possible Commission action and expressly designed to develop a conflict. This Court, in cases referred to above, has made it clear that it will not indulge in guesswork as to possible future state action, but will judge each case as it arises and will, in the meantime, leave the states undisturbed in the exercise of their proper powers.

At this stage of this proceeding, there is no showing of direct and irreconcilable conflict between state action under section 194b, and federal regulation under the Commodity Exchange Act.

II.

The Commodity Exchange Act Does Not Completely, Fully and Exclusively Control and Cover the Activities of Boards of Trade.

It is well settled that supersedure can occur only where there is an irreconcilable conflict between the particular provisions of the federal and state statutes, or where the state statute plainly and palpably infringes the policy of Congress. This principle was announced by the Court as early as 1859, in deciding *Sinnot* v. *Davenport*, 22 How. (U. S.) 227, 243. Is was there said:

> "We agree, that in the application of this principle of supremacy of an Act of Congress in a case where the state law is but an exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two Acts could not be reconciled or consistently stand together; . . ." (page 247)

The same view was reaffirmed in the recent case of *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766, where the Court said:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, . . . or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy."

In the preceding section of this brief it has been shown that there is no irreconcilable conflict between the proposed state regulation of board of trade rules relating to the warehousing of grain, and the particular provisions of the Commodity Exchange Act. There is now to be considered the question of whether, even though there be no direct conflict of particular provisions of the two acts, the state act "plainly and palpably" infringes the policy of Congress expressed in the Commodity Exchange Act.

Where there is no conflict of specific provisions, such infringement of federal policy could only take place if Congress has expressly, or impliedly—by supplying comprehensive and all-inclusive federal regulation—manifested a plain intent wholly to exclude state regulation. There is no contention that the Commodity Exchange Act contains any express language excluding state regulation of board rules relating to the warehousing of grain. If any infringement of Congressional policy is to be found, therefore, it must be on the ground that the Commodity Exchange Act supplies comprehensive and all-inclusive federal regulation of boards of trade, thereby manifesting, by implication, a Congressional intent to exclude the states.

It does not require an extensive analysis of the Commodity Exchange Act to reveal that this legislation does not supply complete, full and exclusive controls covering the activities of boards of trade. The act is primarily concerned with a limited activity of boards of trade, namely, futures transactions, as distinguished from cash transactions. This is clearly indicated by section 3 of the act, setting forth the importance and evils of futures transactions

and the need of establishing controls regarding such transactions. This section reads in part as follows:

> "Transactions in commodity involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest; . . . the transactions and prices of commodity on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, . . ."

Congress sought, in this act, to overcome these evils by prohibiting all futures trading except where executed through registered futures commission merchants and floor brokers trading on boards of trade designated as contract markets by the Secretary of Agriculture. In addition, sections 4, 4a, and 4b of the act prohibit a variety of specific manipulative devices or practices in futures transactions that have led to excess speculation.

The act makes some references to cash transactions, including section 2(a), definition of terms; and sections 5(a), and 5(b) relating to the designation of a board of trade as a contract market. But these references are, in most cases, for the purpose of supplying the Secretary with information and otherwise to assist in the control of futures trading, and not because cash transactions are subjected to comprehensive regulation. There is a limited amount of regulation of cash grain transactions but again, such regulation is mostly incidental to and in aid of the primary objective, regulation of dealings in "futures."

That the primary purpose of the Commodity Exchange Act is to regulate futures transactions, is indicated by what the Court said in *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188, referring to the Grain Futures Act (now Commodity Exchange Act). It was there said:

> ". . . The purpose of the Grain Futures Act was to control the evils of manipulation of prices in grain.

> Such manipulation, Congress found, was effected through dealings in grain futures. . . . It set up a system of regulation and prohibited all future trading which did not comply with the regulations prescribed. . . ." (page 198)

Likewise, in *Board of Trade* v. *Olsen*, 262 U. S. 1, 36, it was said:

> ". . . It is not the sales and deliveries of the actual grain which are the chief subject of the supervision of Federal agency by Congress in the Grain Futures Act, although a record of cash sales is required, and a corner in cash sales would be a violation of it, and there are other provisions equally regulatory of them. It is the contracts of sales of grain for future delivery, most of which do not result in actual delivery, but are settled by offsetting them with other contracts of the same kind, or by what is called 'ringing.' . . ."

See, also, *State* v. *Christopher*, 318 Mo. 225, 2 S. W. (2d) 621.

Yet, while the Commodity Exchange Act is primarily concerned with the regulation of futures trading, transactions of this character actually constitute only a small fraction of the activity of boards of exchange. As this Court said, in *Board of Trade* v. *Olsen, supra*, upholding the constitutionality of the Grain Futures Act:

> "The Chicago Board of Trade is the greatest grain market in the world. . . . (The) great annual flow (of grain into the Chicago market) is made up of the cash grain sold on the exchange, the cash sales to arrive . . ., and the comparatively small percentage of grain contracted to be sold in the futures market not settled by offsetting. . . ." (page 33)

The application of the Commodity Exchange Act to boards of trade is also limited in many other respects. For example, that act provides no federal regulation of sales of cash commodity for deferred shipment or delivery, this character of transaction being specifically excepted in the

definition of the term "future delivery," contained in section 2a. The trifling reference to and indirect regulation of grain warehouses provided by section 5a(3), (6) and (7), discussed at length in the first section of this brief, is confined, by the wording of those subsections, to warehouses that have been declared "regular for futures delivery," under board of trade rules and regulations. The Act provides for no control of the custody of grain in private warehouses.

From what is said above it is evident that the Commodity Exchange Act was not intended, and is not administered, as a means of over-all general regulation of boards of trade and of warehouses utilized in connection therewith. It is limited, in most respects, to the supervision and control of futures transactions by such boards, and in many important respects provides no federal regulation whatever. It must be concluded that there remains a large field of board of trade regulation, including supervision of board rules and regulations pertaining to the warehousing of grain, which has been left wholly unoccupied by Congress.

It has long been recognized as a cardinal principle of the law applicable to supersedure cases that the failure of Congress to occupy the entire field is not to be taken as an intention to require that the unoccupied portion remain unregulated, and so to preclude all State authority. This principle was well stated by this Court in *Kelly* v. *Washington*, 302 U. S. 1, holding that federal statutes and regulations relating to motor-driven tugs, being limited in scope, did not preclude non-conflicting state regulation thereof. The Court said:

> "Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. Minnesota Rate Cases (Simpson v. Shepard) . . . States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount au-

thority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.' " (page 9)

The contention that the Commodity Exchange Act manifests a Congressional intent wholly to preclude state regulation is negatived not only by the limited scope of that act, but by several express provisions therein contained.

Section 12 of the act provides as follows:

"Sec. 12. The Secretary of Agriculture may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; . . ."

If state regulation had been wholly excluded there would be no room or occasion for cooperation. Section 12 shows that Congress contemplated the continued exercise of state authority over boards of trade and made provision for harmonizing and integrating federal and state administration. The Court has heretofore indicated the significance it attaches to provisions calling for cooperation with state officials. In *Townsend* v. *Yeomans*, 301 U. S. 441, it was said:

". . . Instead of frustrating the operation of such state laws (Georgia law fixing maximum charges for handling and selling leaf tobacco), the provisions of the Act expressly afforded and emphasized the opportunity for cooperation with the States in protecting the farmers' interests. In this view we find no ground for

> the contention that Congress has taken possession of the field of regulation to the exclusion of state laws which do not conflict with its own requirements." (page 454)

See, also, *Union Brokerage Company* v. *Jensen*, 322 U. S. 202, 209.

At the conclusion of section 4c of the Commodity Exchange Act, this language appears:

> ". . . Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections."

The respondent, in the Court below, took the position that this express reservation of state authority, being limited to the subject matter of the two indicated sections of the federal act, implied that, as to all other sections thereof, state authority had been superseded.

Acually the reverse is true. The quoted language reserving state authority was for the purpose of preventing supersedure as to the subject matter of sections 4b and 4c, *even where there was direct overlapping or conflict between federal and state laws.* Those two sections specify various types of transactions, such as bucketing orders, wash sales, and fictitious sales, as being "unlawful" under the federal act. Transactions of this nature are also unlawful under the criminal statutes of many states. Since the state statutes deal with precisely the same subject matter, there would be conflict and inevitable supersedure in the absence of a Congressional declaration of the character quoted above.

But no such declaration is necessary to prevent supersedure where there is no direct conflict between state and federal regulations, and so Congress made none. As previously noted, in the absence of a Congressional declaration, supersedure can occur only where the state authority "conflicts with the Act of Congress, or plainly and palpably infringes its policy." *Southern Pacific Co.* v. *Arizona, supra,*

page 766. When Congress uses this much care in preserving state authority even where there is conflict, it seems obvious that, where conflict is absent, Congress meant to leave state authority undisturbed.

In connection with the question of whether the Commodity Exchange Act was intended to oust the states of all jurisdiction, it is pertinent to note that respondent Board of Trade has heretofore, on numerous occasions and in several respects, recognized the continued validity of state regulation under section 194b, and state regulation of federally-licensed warehousemen.

Thus the Board's regulation 1620 provides that storage rates on grain in bulk shall not exceed 1¼ cents per bushel for the first ten days or part thereof. (R. 155) The purpose of this regulation, as respondent itself told the Court below, was to state (and therefore recognize) the Illinois statutes fixing maximum elevation and storage rates.

Board regulation 1623 provides:

> "Any regular warehouse may be declared to be irregular by the Board at any time for violation of the laws of Illinois or the Rules or Regulations of the Association." (R. 156)

In numerous cases, extending from 1931 to 1941, the respondent has submitted to the jurisdiction of the Commission. These cases are Illinois Commerce Commission Docket Nos. 22440 and 22441, order entered in 1933; 22680, orders issued Oct. 27 and Nov. 16, 1933; 23116, orders issued July 12, 1934, May 18, 1937 and Aug. 13, 1941; 23125, order issued in July, 1934; 25215, order issued on Dec. 15, 1936.

Paragraph 3 of respondent's motion filed with the Commission to dismiss the Rice complaint, contains this statement:

> "3. *While this defendant has always complied with Section 194b of the Illinois Grain Warehouse Act* (An Act to regulate public warehouses, etc., approved April 25, 1871 as amended, Chap. 141, Sections 189-221, Illinois Revised Statutes) *and has always complied in all*

respects with the laws of the State of Illinois and the orders of this Commission, nevertheless this action requires this defendant to assert, as it here asserts, that said Commodity Exchange Act and the regulations of the Secretary issued thereunder supersede and nullify the constitution of the State of Illinois and all laws, statutes and ordinances of the State of Illinois and all orders and regulations of this Commission with respect to the operations of this defendant as a contract market, . . ." (R. 21)

These manifestations of previous acquiescence in and, indeed, affirmative utilization and application of, state authority may not work an estoppel against respondent's contrary contention here. But the merit and soundness of respondent's supersedure argument here can hardly help but be affected by the knowledge that, in the past, when it was an advantage to respondent, state authority was acknowledged and made use of. Confronted now with the Rice complaint, charging numerous inequitable and unfair practices subject to state scrutiny under the same state statutory authority, respondent has suddenly discovered that this field of regulation has been precluded by the federal act—an act which itself affords no protection to the public with respect to the matters here complained of.

III.

The United States Warehouse Act Does Not Preclude the Exercise of State Authoity Over Board of Trade Rules and Regulations Relating to Warehousing of Grain.

The respondent contended, in the Court below, that the exercise of state authority pursuant to section 194b of the state statute has been precluded not only by the Commodity Exchange Act, but also by the United States Warehouse Act.

The question of supersedure as a result of enactment of the Commodity Exchange Act has been discussed in the foregoing section of this brief. The question of supersedure

as a result of enactment of the United States Warehouse Act is the principal issue in the companion case, *Illinois Commerce Commission* v. *Great Lakes Elevator Corporation*, No. 470, October Term, 1946. This *amicus curiae* has filed a brief in that case, in support of the petition for writ of certiorari, in which the question of supersedure by reason of the United States Warehouse Act is discussed at length. There is summarized below the argument there made on this question.

I. Beginning with *Munn* v. *Illinois*, 94 U. S. 113, the regulation of public warehousemen has become a traditional function of state government. Because of this, the principles of supersedure should be strictly applied here in favor of continued validity of state authority. The problem is to ascertain the intention of Congress. But, in supersedure cases it is uniformly held that the purpose of Congress to supersede is not lightly to be inferred, but the intention to do so must definitely and clearly appear. *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd.*, 315 U. S. 740, 749. The presumption favors continued validity of state authority. *Reid* v. *Colorado*, 187 U. S. 137, 153. Supersedure can occur only where there is an irreconcilable conflict between the particular provisions of the federal and state statutes, or where the state statute plainly and palpably infringes the policy of a federal act. *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766.

II. The Rice complaint, which led the Commission to institute this proceeding, sought relief under nine separate and distinct provisions of the Illinois statutes. The injunction prevents the Commission from considering any one of these nine items. If, therefore, it can be established that the Commission's jurisdiction has not been superseded with respect to any one or more items, then granting the injunction was clearly erroneous. It is true that, unless the entire state statute is sustained, there is the possibility that the validated portions may not be considered severable from those which are held to be superseded. But this Court will not

determine, in the first instance, whether a comprehensive state statute is severable. *Watson* v. *Buck*, 313 U. S. 387. Nor will the Court look, for supersedure, among state statutes which have not been applied. *Allen-Bradley Local* v. *Wisconsin E. Rel. Bd. supra.* As yet, the Commission has been given no opportunity to apply any provision of the state statutes to these respondents.

The rate regulatory provisions of the Illinois statute, invoked by Rice, do not conflict with the Secretary's limited functions respecting rates. The Rice complaint asks the Commission to prescribe just, reasonable and non-discriminatory rates. The Secretary has only power to revoke licenses because of unreasonable rates, and to require that warehouse rates be filed and posted. The mere acceptance of a schedule of rates for filing does not imply that they have been approved. *Interstate Commerce Commission* v. *Cincinnati etc. R. Co.*, 167 U. S. 479, 504. It cannot be assumed that a state agency will violate its statutory duty by prescribing unreasonable or extortionate rates. If the Secretary finds state-prescribed rates to be unreasonable, the warehouseman may nevertheless continue to charge such rates by giving up his permissive federal license. But if it is the intent of the Warehouse Act that a licensee may not be compelled, by state action, to follow a course which compels revocation of the federal license, still no conflict with the state's general rate regulation is involved. Under the *Shreveport* doctrine, no requirement under the Warehouse Act can conflict with normal state regulation. Nor, under the principles of supersedure, is the Court required to anticipate every possibility of invalid action by the State. *W. W. Cargill Co.* v. *Minn. ex rel. Railroad and W. Com.*, 180 U. S. 452, 468. The *Hefley* case (158 U. S. 98), relied upon by respondents, is not in point, for it involved interstate railroad rates, and the federal and state statutes there in question prescribed conflicting rules covering precisely the same matter.

The provisions of the Illinois statutes relating to discriminatory and preferential practices, do not conflict with the

federal act. Section 18 of the federal act, requiring warehouse receipts to disclose whether the warehouseman has stored his own grain, does not authorize or approve the practice or preclude a state from prohibiting the practice. The proviso to Section 18 indicates that Congress acknowledged the continued operation of state laws pertaining to grain stored in federally-licensed warehouses. A similar provision in another federal statute has been held not to preclude state laws on the subject. *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188. Enforcement of the state prohibition against such practice would not invalidate outstanding warehouse receipts, for the state orders and penalties would run against the warehouseman—there is no provision for confiscation of the grain.

The provisions of the Illinois statute respecting contracts between affiliates or with other public utilities, and respecting issuance of securities, do not conflict with the federal act. The federal act gives the Secretary no express authority as to these matters. The *Cloverleaf* case (315 U. S. 148) does not support the view that the Secretary has implied power to deal with these matters, since there the Court found the State act to be in conflict with the federal agency's expressly conferred powers.

State control of these contracts and security issues, would not conflict with any other function or power of the Secretary. Respondent's proposition that no state or local law must be permitted to affect construction projects required by the Secretary, would nullify zoning ordinances, fire and building codes, and Blue Sky laws, along with the state powers here in question. The only possibility of conflict envisaged by respondents involves a hypothetical case of the most imaginative character. The true question is not whether the state act *might* be so administered as to give rise to conflict, but whether it *is* being so administered here. *Terminal R. Assoc.* v. *Brotherhood of R. Trainmen*, 318 U. S. 1.

III. The Illinois statutes regulating warehouses do not infringe the policy of the United States Warehouse Act.

As a general rule, the failure of Congress to occupy the entire field is not to be taken as an intention to require that the unoccupied portion remain unregulated. *Kelly* v. *Washington*, 302 U. S. 1. As originally enacted in 1916, the federal act was not intended to supersede all state regulation. The act was limited in scope to the establishment of a federal system of warehouse receipts, so that agricultural products could have value as collateral. This is indicated not only by an analysis of the statute, but also by examination of the legislative history.

The 1931 amendment did not change the scope of the act, but made federal action "exclusive" within the limited field covered by the original act. This is indicated by the language of the act. Amended section 29 still provides for cooperation with the states, and "Where the Government has provided for collaboration the courts should not find conflict." *Union Brokerage Company* v. *Jensen*, 322 U. S. 202. That the 1931 amendment of Section 29 did not operate to supersede all state regulation applicable to federally-licensed warehousemen is also indicated by the legislative history, and by what this Court said in *United States* v. *Hastings*, 296 U. S. 188. Like conclusions, for like reasons, must be drawn regarding the 1931 amendment of section 6.

In considering this whole question of state infringement upon a policy of Congress; great weight must be given to the fact that we are here dealing with a long-exercised function of state government. *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144.

IV. The Supreme Court cases holding that supersedure has occurred are clearly distinguishable. Most of these decisions involve matters which, unlike warehouse regulation, have been customarily controlled at the national level. Where preemption has been found in a field theretofore open to state regulation, this has been due to a conflict of precise regulations or a clash between the policy of the federal and state acts, both of which are lacking in the

nstant case. *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 48, although clearly distinguishable from the present case, epresents about the farthermost point the Court has indicated a willingness to go in finding supersedure. This ase turned on a five to four decision and the essence of he views expressed in the dissenting opinion (and much of he exact language) became the majority opinion a year ater, in *Penn Dairies* v. *Milk Control Com.*, 318 U. S. 261.

CONCLUSION.

The petitions for the writ of certiorari should be granted.

Respectfully submitted,

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eptember 20, 1946.

SUPREME COURT OF THE UNITED STATES

Nos. 471 and 473.—October Term, 1946.

Daniel F. Rice, Joseph J. Rice, et al., etc., Petitioners, 471 *v.* Board of Trade of the City of Chicago, a Corporation, Illinois Commerce Commission, et al., Petitioners, 473 *v.* Board of Trade of the City of Chicago, a Corporation.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 5, 1947.]

Mr. Justice Douglas delivered the opinion of the Court.

These are companion cases to *Rice* v. *Santa Fe Elevator Corp.*, and *Illinois Commerce Commission* v. *Santa Fe Elevator Corp., ante*, p. —, decided this day. Respondent in these cases, the Chicago Board of Trade, was joined as a defendant in the proceeding brought by Rice before the Illinois Commerce Commission. As we have noted in our opinion in the companion cases, the Rice complaint charged the defendant warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating inadequate and unsafe facilities and services, and with failure to comply with other requirements of Illinois law. The Board of Trade, organized under a special Act of the Illinois legislature, operates a commercial grain exchange and has adopted rules and regulations governing transactions on the exchange. The complaint of Rice charges (1) that the rules and regulations of the Board are unreasonable and unsatisfactory in that, among other things, they favor warehousemen and sellers of grain and discriminate against grain buyers; and (2) that the Board

has from time to time adopted rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses without securing the prior approval of the Illinois Commission. Under Illinois law, it is alleged, such rules may not become operative without approval by the Commission; and the Commission in turn has authority to adopt and promulgate rules of its own. Ill. Rev. Stat. 1945, ch. 114, § 194b.[1] Relief asked on this phase of the proceeding was a declaration that the Board's rules, which did not have the prior approval of the Commission, were void; and an order that the Board adopt and submit rules which were fair, equitable, adequate and specific.

The Board moved to dismiss the proceeding before the Commission on the ground that the Commodity Exchange Act, 49 Stat. 1491, as amended, 7 U. S. C. § 1 *et seq.*, and the regulations thereunder superseded the provisions of Illinois law which Rice sought to invoke. That motion was denied. Thereupon, these suits were instituted in the District Court to enjoin the proceedings before the Illinois Commerce Commission. The District Court dismissed the complaints. The Circuit Court of Appeals reversed. 156 F. 2d 33. The cases are here on certiorari.

The Chicago Board of Trade is "the greatest grain market in the world." *Board of Trade* v. *Olsen*, 262 U. S. 1, 33. Its activities have been regulated by Congress by the Future Trading Act, 42 Stat. 187, by the Grain Futures Act, 42 Stat. 998, and by the Commodity Exchange Act. See H. R. Rep. No. 421, 74th Cong., 1st Sess.

[1] That section provides: "No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective."

The Board of Trade claims a status under the Commodity Exchange Act which, it is contended, precludes the Illinois Commission from entertaining the Rice complaint.

The Commodity Exchange Act provides comprehensive regulation of trading in futures on commodity exchanges which are designated as "contract markets" by the Secretary of Agriculture. The Secretary is authorized to designate any board of trade as a contract market on its compliance with prescribed terms and conditions. § 5. The Chicago Board of Trade has been so designated. The Act contemplates that each contract market will adopt rules governing transactions in futures contracts. Approval of a board of trade as a contract market may be made only when "the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board." § 5 (d). The Act contains provisions which prohibit certain types of trading practices (see for example §§ 4b, 4c, 4h) and other provisions (as for example those dealing with excessive speculation, see § 4a) which limit or control buying and selling on contract markets. But we are not particularly concerned with those phases of the federal regulatory scheme. So far as the problem of supersedure is concerned, this Act is unlike the one considered in the companion cases, as we shall see. Moreover, the subject matter of the complaint filed by Rice with the Illinois Commission against the Board of Trade relates only to the warehousing of grain. On that matter the Act has only two specific provisions.

It provides in the first place that receipts issued under the United States Warehouse Act, 39 Stat. 486, as amended, 7 U. S. C. § 241 *et seq.*, shall be accepted without discrimination in satisfaction of futures contracts made on or subject to the rules of the contract market, even though the warehouseman is not also licensed under state law or enjoys different privileges than those accorded by state law, provided *inter alia*, that "the warehouse in

which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes." § 5a (7). Moreover, each contract market has some control over warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of the contract market. Thus the contract market must require the warehouse operators "to make such reports, keep such records, and permit such warehouse visitation" as the Secretary may prescribe. § 5a (3). All rules and regulations of a contract market, and all changes and proposed changes, must be filed with the Secretary. § 5a (1).

Enough of the Act has been summarized to show that it imposes on contract markets, under the supervision of the Secretary, (1) duties of preventing or controlling certain trading practices and of supervising transactions in futures contracts, and (2) some responsibility for standardizing deliverable warehouse receipts and assuring their integrity. The failure or refusal of a board of trade to comply with the provisions of the Act or any of the rules and regulations of the Secretary is cause for suspension or revocation of the authority of the board to act as a contract market. § 5b. And see § 6 (a). Criminal penalties are provided for certain violations of the Act, or of rules or regulations of the Secretary, by a board of trade or any of its directors, officers, agents or employees. §§ 6b, 9. The Secretary has the power to "make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade. . . ." § 8. And the Secretary is given broad rule making powers. § 8a (5).

The Secretary has promulgated numerous rules and regulations covering a variety of subjects pertaining to contract markets and their activities.[2] The following are

[2] The rules and regulations are to be found in 17 C. F. R., Part I.

relevant here since they relate to the warehousing of grain: (1) a requirement that each contract market file information concerning warehouses in which or out of which commodities are deliverable in satisfaction of futures contracts made on the contract market, § 1.43; and (2) a provision that each contract market shall require operators of warehouses whose receipts are deliverable in satisfaction of futures contracts made on or subject to the rules of the contract market (a) to keep specified records, (b) to furnish information concerning stocks of commodities in warehouses, (c) to permit visitation of the premises and inspection of the books and records by duly authorized representatives of the Federal Government. § 1.44.

In pursuance of the latter regulation of the Secretary, the Board of Trade enacted the rules and regulations which Rice challenged in the proceedings before the Illinois Commission. One rule provides that deliveries shall be made by delivery of warehouse receipts issued by warehouses which have been declared "regular" by the Board. Rule 281. The Board's regulations relating to warehousing of grain set forth the procedure and standards by which warehouses may be made "regular." [3]

It is apparent that the federal scheme of regulation of futures trading extends to the whole futures contract—

[3] These regulations provide, *inter alia*, that the warehouses must be "conveniently approachable by vessels of ordinary draft", have "customary shipping facilities", and charge rates not exceeding a specified maximum (Reg. 1620); must file a bond satisfactory to the Board (Reg. 1621); must have proprietors or managers in "unquestioned good financial standing and credit" (Reg. 1624); must be connected by railroad tracks with one or more of the eastern railway lines" (Reg. 1625); and must be "provided with modern improvements and appliances for the convenient and expeditious receiving, handling, and shipping of grain in bulk." (Reg. 1626).

Any "regular" warehouse may be declared "irregular" by the Board at any time for violation of the laws of Illinois or the rules and regulations of the Board (Reg. 1623), or because of any important change in the conditions of any warehouse or disregard or evasion of the requirements governing regular warehouses (Reg. 1629).

to its satisfaction, as well as to its execution. It is also apparent that the Act provides some control over (1) warehouse receipts which are acceptable in satisfaction of sales and purchases on the contract market, and (2) the qualifications of the warehouses whose receipts will be accepted for such deliveries. But there is not contained in the Commodity Exchange Act, as there is in the United States Warehouse Act, see *Rice* v. *Santa Fe Elevator Corp., supra,* a declaration by Congress that the system which it has adopted for the regulation of trading on contract markets is exclusive of state regulation. Here Congress has gone no further than to write into the Act prohibitions and controls and to give the force of law both to them and to rules and regulations of the Secretary made within the scope of his statutory authority. With exceptions which we will note, state regulations which conflict with the requirements of the Act or with the rules and regulations of the Secretary would be superseded under the familiar rule.

Congress treated the rules and regulations of the Board of Trade differently from those of the Secretary. It did not undertake to put behind them civil or criminal sanctions.[4] It merely furnished standards (or authorized the Secretary to do so) to which the rules and regulations of the Board were to conform. And while there is provision in some instances for disapproval of the Board's rules by the Secretary of Agriculture (see § 4c), there is no provision for his approval or disapproval of the rules challenged in the Illinois proceeding. Insofar as those rules are concerned, all that the Act and the regulations of the Secretary do is to define the area in which the Board may provide standards for warehouses whose receipts are acceptable in satisfaction of futures contracts. By the terms of § 5a

[4] We therefore have no attempt here to endow private groups with law making functions." Cf. *Schechter Corp.* v. *United States*, 295 U. S. 495; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 225-227; *Parker* v. *Brown*, 317 U. S. 341, 350-352.

(7) the requirements fixed by the Board must be "reasonable" and they must relate to "location, accessibility, and suitability for warehousing and delivery purposes." If the Board transcends those bounds, it violates the Act. See § 6b. But within that area it has considerable discretion.[5]

Hence it seems to us that no action of the Illinois Commission within the zone where the Board has freedom to act would contravene the federal scheme of regulation.[6] It would be quite a different matter if the Illinois Commission adopted rules for the Board which either violated the standards of the Act or collided with rules of the Secretary. But such collision is not necessary; and we cannot assume that the Illinois Commission will take any action which in any way impairs the federal regulatory scheme.

There is other intrinsic evidence that Congress did not preclude state regulation which supplements or bolsters the federal scheme. Sections 4b and 4c of the Act make unlawful a variety of fraudulent and deceptive practices on contract markets. And § 4c provides that "nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated

[5] In the present proceeding the question of the validity of the existing rules and regulations of the Board of Trade under the Commodity Exchange Act is not in issue, and we intimate no opinion upon it.

[6] It is suggested that the regulations of the Board of Trade or those which the Illinois Commerce Commission may impose on it are automatically invalid insofar as they relate to warehouses. For in *Rice* v. *Santa Fe Elevator Corp.*, *supra*, we have held that the United States Warehouse Act excludes all state regulation, no matter how complementary, of those subjects touched by the federal regulatory scheme. But the situation here is quite different. In the first place, we are dealing with a measure of regulation over warehouse receipts not federal warehousemen; and the regulations which the Board of Trade is authorized to formulate do not carry civil or criminal sanctions. In the second place, Congress by granting the Board of Trade freedom to regulate within this narrow field has by that very act negatived any inference that the Federal Government has preempted it by requirements of its own.

or described in such sections." These fraudulent practices, or many of them, have long been the occasion for the exercise by the States of their historic police powers. Federal regulation in those fields would therefore almost certainly conflict with state laws. Thus the provision in § 4c serves the function of preventing supersedure and preserving state control in two areas where state and federal law overlap. Where Congress used such care to preserve specific state authority, even when it duplicated federal regulation, it is a fair inference not only that supersedure was to take its natural course where rights not saved to the States were involved, *First Iowa Hydro-Electric Coop.* v. *Federal Power Commission*, 328 U. S. 152, 175, but also that non-conflicting state authority was left undisturbed. Moreover the provision in § 12 of the Act that the Secretary "may cooperate with any department or agency of the Government, any State . . . or political subdivision thereof" supports the inference that Congress did not design a regulatory system which excluded state regulation not in conflict with the federal requirements. See *Townsend* v. *Yeomans*, 301 U. S. 441, 454; *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, 209.

Respondents' claim of supersedure is, therefore, premature. Until it is known what rules the Illinois Commission will approve or adopt, it cannot be known whether there will be any conflict with the federal law. Any claim of supersedure can be preserved in the state proceedings. And the question of supersedure can be determined in light of the impact of a specific order of the state agency on the Federal Act or the regulations of the Secretary thereunder. Only if that procedure is followed can there be preserved intact the whole state domain which in actuality functions harmoniously with the federal system. For even action which seems pregnant with possibilities of conflict may, as consummated, be wholly barren of it.

Reversed.